THE FINANCIAL SERVICES COMMISSION OF ONTARIO

PENSION BULLETIN

APRIL, 1999 VOLUME 8, ISSUE 1

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The Financial Services Commission of Ontario Act, 1997, the Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 R..R.O. 1990 as amended, the terms of the pension plan and trust, if any, and the policies and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

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General Announcements

Acting Chair and Vice-Chair

Eileen Gillese resigned from her position as Chair of the Financial Services Commission of Ontario (FSCO) and Chair of the Financial Services Tribunal, on January 11, 1999, when she was appointed as a judge to the Ontario Court (General Division). Martha Milczynski has assumed the position of Acting Chair, and Kathryn Bush is Acting Vice-Chair. Colin McNairn continues in his position as Vice-Chair.

Pension Staff

As part of FSCO's commitment to build expertise in the pension area, there have been a number of changes and/or additions in both the Pension Policy Unit of the Policy and Communications Branch, and in the Pension Plans Branch.

In the Pension Policy Unit, Roger Smithies is now senior manager, Jerry Williams is senior policy consultant, Mathew Ou is senior policy analyst and James De Monte is policy analyst.

In the Pension Plans Branch, Dave Gordon has been appointed acting director.

Year 2000

As the regulator of financial services in Ontario, FSCO has taken steps to ensure its stakeholders are kept up-to-date on issues of Year 2000 compliance, so that responsibilities to consumers can be met. FSCO will continue to keep our stakeholders informed of further developments.

In June 1998 the Superintendent of Financial Services sent a letter to all pension plan administrators, reminding them of their responsibility to ensure there are no interruptions in plan activities, and individuals are not disadvantaged as a result of Year 2000 computer problems. The letter also identified some pension administrative functions which might be affected by such a problem and attached a bibliography of Year 2000 resources.

To get a better idea of the state of Year 2000 readiness in the pension sector, FSCO is currently in the process of conducting a survey. In January 1999, an anonymous questionnaire was sent to approximately 100 administrators of pension plans, chosen randomly by the number of plan members. In addition, the questionnaire was posted on the FSCO website (www.fsco.gov.on.ca) and administrators were invited to participate.

The questionnaires received to date indicate that most internal critical systems are Y2K ready now or will be by mid-1999. The majority of respondents are attempting to satisfy themselves that their third party servers will be ready but have said that they cannot ensure this. Most respondents have indicated they are aware of the legal implications and potential liabilities. Approximately half feel it necessary to develop contingency plans to deal with delays in their systems or in those of third party servers, and about half of the respondents have designated an individual to respond to inquires from employees.

FSCO Website - www .fsco.gov.on.ca

As part of FSCO's ongoing effort to be a more cost-effective and efficient regulator, Tribunal decisions are sent to the affected parties only, by mail. These decisions, as well as FSCO publications and Board matters are posted on FSCO's website. Internet access is available free at most public libraries across Ontario. FSCO continues to mail its Insurance Bulletins and Pension Bulletins to stakeholders in these sectors.

Advisory Committees

It has been an active time for the four FSCO Pension Advisory Committees - Accounting and Assurance (formerly Accounting and Auditing), Actuarial, Legal, and Investment. During the Fall of 1998 new appointments were made to fill vacancies on each Committee. In December 1998 Superintendent Dina Palozzi met with each committee to report on FSCO's activities and what is planned for the Committees in 1999.

For the first time, FSCO hosted an Advisory Committee Pension Forum on February 25, 1999. The Forum provided an opportunity for the four Committees to meet together with the Superintendent and senior staff, and discuss various pension issues which may be incorporated into FSCO's strategic priorities for the following year.

The Forum's structure gave all participants a chance to share their views. The Superintendent, the Director of the Policy and Communications Branch, and the Director of the Pension Plans Branch discussed FSCO's strategic priorities and policy and operational priorities. Group discussions followed, in which committee members broke into smaller groups composed of members of the four committees to discuss the issues raised and exchange ideas. Following this "cross fertilization", the Chairs of each Committee reported on the issues identified earlier.

FSCO staff have developed action plans to address the major issues identified in the forum. Working groups of members of the Advisory Committees and FSCO staff will implement the action plans.

The Superintendent and senior staff also held two meetings with the Pension Committee of the Ontario Federation of Labour to discuss pension issues that are of particular interest to organized labour as representatives of members of pension plans. Further meetings will be held during the year.

FSCO has received a number of responses from plan administrators and sponsors who volunteered to be included on a consultation roster. This group, which represents a broad cross-section of private industry, public sector plans, union plans and third-party administrators, will be called upon to participate in specific consultations on various issues.

The Superintendent recently met with the group and received advice on FSCO's draft Statement of Priorities 2000-2001, as well as operational issues affecting employers and administrators.

An updated list of members of the Advisory Committees follows:

FSCO Pension Investment Advisory Committee

Alfred G. Wirth, Chair
Wirth Associates Inc.

Robert Bertram,
Ontario Teachers' Pension Board

Jim Franks,
Frank Russell Canada Ltd.

Bruce J. Grantier,
Scotia Cassels

Elaine Hamilton,
United Church of Canada

Claire O. Kyle,
TD Asset Management Inc.

Ann Marshall,
James P. Marshall Inc.

Thomas E. Phelps,
Noranda Inc.

Robert R. Rafos,
Newcastle Capital Management Inc.

Marc L. Rouillard,
Watson Wyatt

FSCO Pension Actuarial Advisory Committee

Allan H. Shapira, Chair
Hewitt Associates LLC

Peter Beca,
Aon Consulting Inc.

Art Bicknell,
Sun Life Assurance Company of Canada

Sylvie Charest,
William M. Mercer Limited

K. Paul Duxbury,
The Segal Company Limited

Karen Figueiredo,
Towers Perrin

Patrick F. Flanagan,
Eckler Partners Limited

Karen G. Long, KPMG Actuarial,
Benefits & Compensation Inc.

Kem Majid,
Watson Wyatt

Jean-Claude Primeau,
William M. Mercer Limited

Rob Rosenblat,
Aon Consulting Inc.

Alnasir H. Samji,
Towers Perrin

FSCO Pension Accounting and Assurance Advisory Committee

Don Wilkinson, Chair
Deloitte & Touche LLP

Richard Farrar,
Grant Thornton

R. Wayne Gladstone,
OMERS

Marie Holland,
KPMG Pension Services

Douglas Isaac,
PricewaterhouseCoopers

Neil Jacoby,
Aurion Capital Management Ltd.

Ron Koehli,
Institute of Chartered Accountants of Ontario

Bryan Kogut,
BDO Dunwoody

Greg P. Shields,
Canadian Institute of Chartered Accountants

Kenneth J. Vallillee,
Arthur Andersen LLP

Karen A Yule,
Ernst & Young

FSCO Pension Legal Advisory Committee

Dona Campbell, Chair
Sack Goldblatt Mitchell

Leigh Ann Bastien,
William M. Mercer Limited

Jeremy Forgie,
Blake Cassels & Graydon

Peter K. Fritze,
Tory Tory Deslauriers & Binnington

Murray Gold,
Koskie & Minsky

Bernard A. Hanson,
Cavalluzzo Hayes Shilton McIntyre & Cornish

Priscilla H. Healy,
Towers Perrin

Rose Mark,
State Street Trust Company Canada

Gary F. Nachshen,
Stikeman, Elliott

Mary M. Picard,
Fraser Milner

Clifton P. Prophet,
Gowling, Strathy & Henderson

Douglas Rienzo,
Osler, Hoskin & Harcourt

FSCO Advisory Council

The Financial Services Commission of Ontario has formed an Advisory Council to provide advice and recommendations on matters such as its strategic priorities, fees and assessment structure, and FSCO's operations and broad industry issues. Input from this

external group will assist FSCO in fulfilling its mandate of enhancing public confidence in the financial services sectors it regulates. Members of the Advisory Council are participants in the insurance, pension, loan and trust, credit unions and caisses populaires, co-operatives and mortgage broker sectors, and include consumer representatives.

FSCO Advisory Council Members

Dina Palozzi, Chair
Financial Services Commission of Ontario

Michael Carberry,
Affiliate Insurance Management Inc.

John J. Carter,
Pension Consultant

Jeff Contant,
HB Group Insurance Management Ltd.

Tom Delaney,
Tom Delaney Financial Group

Dennis Deters,
The Co-operators Group

David Farrish,
London Life

Jonathan Guss,
Credit Union Central of Ontario

Florence Holden,
Canadian Bar Association - Ontario (Pension Section)

Linda Matthews,
Royal & Sun Alliance

Ross McClellan,
Ontario Federation of Labour

Rayner E. McCullough,
McCullough Sawyer Financial Services

A.D. (Ric) McGratten,
MCAP Mortgage Corporation

Daniel J. Morrison,
Watson Wyatt Worldwide

Isaac Sananes,
Canadian Premier Life Insurance Company

Gerald Soloway,
Home Savings & Loan Corporation

Pierre Tougas,
La Fèdèration des Caisses Populaires de l'Ontario

Percy Vermeersch,
The Investment Centre

Nick Villani,
Aetna Canada

Donald Wallace,
Canadian Association of Retired Persons

Contacts for Pension Policy Enquiries

All phone numbers are area code 416. FSCO's toll free telephone number is 1-800-668-0128.

PENSION POLICY UNIT		
NAME	POSITION	PHONE NUMBER
Roger Smithies	Senior Manager	226-7843
Jerry Williams	Senior Policy Consultant	226-7771
Mathew Ou	Senior Policy Analyst	226-7772
James De Monte	Policy Analyst	226-7773

Contacts for Plan Specific Enquiries

Allocations	Officer	Telephone
(DB) Agriculture/Mining/Construction plans (DC) M plans	David Allan	226-7803
(DB) Finance plans (DC) # and CAA-CHA plans	Gino Marandola	226-7820
(DB) Public Admin./Printing/Publishing plans (DC) F plans	John Graham	226-7774
(DB) Trade/Commercial plans (DC) T plans	Stanley Chan	226-7806
(DB) Rubber/Plastics	Gwen Gignac	226-7812
(DB) Transportation/Equipment/Electrical plans (DC) W, X, Y and Z plans	Larry Martello	226-7821
(DB) Food/Beverages plans (DC) L and N plans	Irene Mook-Sang	226-7824
(DB) Textiles/Paper plans (DC) S plans	Jaan Pringi	226-7826
(DB) Primary Metals/Machinery plans (DC) D and O plans	Rosemin Jiwa-Jutha	226-7816
(DB) Non-Metallic/Chemicals plans (DC) G and I plans	Lynda Ellis	226-7809
(DB) A-BRI plans (DC) J plans	Rosemin Jiwa-Jutha	226-7816
(DB) BRO-CONR plans (DC) U plans	Carla Adams	226-7756
(DB) Cons-DS plans (DC) A plans	Irene Mook-Sang	226-7824
(DB) DU-FZZ plans (DC) P plans	Gwen Gignac	226-7812
(DB) G-HAZ plans (DC) H plans	Sharon Polischuk	226-7819
(DB) HEA-KMZ plans (DC) CHB-CZZ	William Qualtrough	226-7827
(DB) KNA-MOQ plans (DC) B plans	Larry Martello	226-7821
(DB) MOR-PNZ plans (DC) K plans	Gino Marandola	226-7820
(DB) POL-SHE plans (DC) R plans	Penny McIlraith	226-7822
(DB) SHI-TORO plans (DC) E plans	Stanley Chan	226-7806
(DB) TORR - #s (DC) Q&V	John Graham	226-7774

Legislative Changes/Regulatory Policies

ONTARIO REGULATION 307/98
MADE UNDER THE PENSION BENEFITS ACT

MADE: JUNE 17, 1998, FILED: JUNE 19, 1998
AMENDING REG. 909 OF R.R.O. 1990
(GENERAL)

NOTE: Since January 1, 1997, Regulation 909 has been amended by Ontario Regulations 286/97 and 415/97. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1996.

1. Section 2 of Regulation 909 of the Revised Regulations of Ontario, 1990 is revoked.

2. (1) Clause 4 (6) (b) of the Regulation is amended by striking out "the Superintendent and the Commission are" in the first line and substituting "the Superintendent is".
(2) Subsection 4 (7) of the Regulation is amended by striking out "the Superintendent shall submit the report to the Commission" in the fourth and fifth lines and substituting "the actuary shall submit the report to the Superintendent".
(3) Subsection 4 (8) of the Regulation is amended by striking out "and need not submit the report to the Commission" in the fifth line and substituting "and the actuary need not submit the report to the Superintendent".
(4) Subsection 4 (9) of the Regulation is amended by striking out "Commission" in the second line and substituting "Superintendent".

3. Clause 6 (5) (d) of the Regulation is amended by striking out "Commission" in the first line and substituting "Superintendent".

4. (1) Subclause 8 (1) (b) (iii) of the Regulation is amended by striking out "Commission" in the third line and substituting "Superintendent".
(2) Clause 8 (2) (b) of the Regulation is revoked and the following substituted:
(b) notice of proposal to wind up the pension plan was given to the Superintendent of Pensions before December 18, 1991.

5. (1) Subsection 10 (1) of the Regulation is amended by striking out "Commission" in the second line and substituting "Superintendent".
(2) Subsection 10 (11) of the Regulation is amended by striking out "Commission" in the third line and substituting "Superintendent".

6. Clause 10.1 (1) (b) of the Regulation is amended by striking out the portion before subclause (i) and substituting the following:
(b) if the Superintendent is satisfied, on the basis of such information and evidence as he or she may require from the employer or administrator, that,

7. Section 12 of the Regulation is amended by striking out "Commission" in the third line and substituting "Superintendent".

8. (1) Subsections 8 (2) to (5) of the Regulation are revoked.
(2) Section 18 of the Regulation is amended by adding the following subsection:
(8.1) A certificate referred to in subsection (7) or (8) must be in a form approved by the Superintendent.

9. Subsection 19 (5.1) of the Regulation is amended by striking out "with the Superintendent" in the fifth line.

10. (1) Paragraph 5 of subsection 25 (1) of the Regulation is amended by striking out "Commission" in the second line and substituting "Superintendent".

(2) Paragraph 7 of subsection 25 (1) of this Regulation is amended by striking out "Commission" in the second line and substituting "Superintendent".

(3) Subsection 25 (2) of the Regulation is revoked and the following substituted:

(2) The employer shall file a copy of the notice required by subsection 78 (2) of the Act before transmitting it to the persons required by that subsection.

(4) Subsection 25 (4) of the Regulation is amended by striking out "Commission" in the second line and substituting "Superintendent".

11. Section 27 of the Regulation is revoked.

12. (1) Clause 28 (2) (t) of the Regulation is amended by striking out "Pension Commission of Ontario" in the second line and substituting "Superintendent".

(2) Clause 28 (5) (e) of the Regulation is amended by striking out "Commission" in the second line and substituting "Superintendent".

(3) Clause 28 (5) (g) of the Regulation is amended by striking out "Commission" in the second line and substituting "Superintendent".

(4) Subsection 28 (5.1) of the Regulation is revoked and the following substituted:

(5.1) The employer shall file a copy of the notice required by subsection 78 (2) of the Act before transmitting it to the persons required by that subsection.

(5) Subsection 28 (6) of the Regulation is amended by striking out "Commission" in the second line and substituting "Superintendent".

13. (1) Clause 29 (7) (c) of the Regulation is revoked and the following substituted:

(c) with respect to which no order has been made under subsection 83 (1) of the Act.

(2) Subsection 29 (8) of the Regulation is amended by striking out "a declaration under subsection 83 (2) of the Act is made" in the 14th and 15th lines and substituting "an order is made under subsection 83 (1) of the Act".

(3) Clause 29 (9) (c) of the Regulation is amended by striking out "where the Commission has made a declaration under section 83 of the Act" in the first and second lines and substituting "where an order has been made under subsection 83 (1) of the Act".

14. Section 33 of the Regulation is amended,

(a) by striking out "Where the Commission makes a declaration" in the first line and substituting "Where an order is made"; and

(b) by striking out "declaration" in the last line and substituting "order".

15. (1) Subsection 34 (1) of the Regulation is amended,

(a) by striking out "Where the Commission has made a declaration under subsection 83 (1) of the Act" in the first and second lines and substituting "Where an order has been made under subsection 83 (1) of the Act"; and

(b) by striking out "at the time of the declaration" in the third and fourth lines and substituting "when the order is made".

(2) Subsection 34 (2) of the Regulation is amended,

(a) by striking out "Where the Commission has made a declaration under subsection 83 (1) of the Act" in the first and second lines and substituting "Where an order has been made under subsection 83 (1) of the Act"; and

(b) by striking out "at the time of the declaration" in the third line and substituting "when the order is made".

(3) Subsection 34 (5) of the Regulation is

amended by striking out "the Commission makes a declaration" in the first line and substituting "an order is made".

(4) Subsection 34 (7) of the Regulation is amended by striking out "Commission" in the first line and substituting "Superintendent".

16. (1) Paragraph 2 of subsection 45 (1) of the Regulation is revoked and the following substituted:

2. Any documents relating to the pension plan that must be filed in support of an application for registration of the plan under subsection 9 (2) of the Act (or under a predecessor to that subsection) or in support of an application for registration of an amendment to the plan under subsection 12 (2) of the Act (or under a predecessor to that subsection).

(2) Paragraph 4 of subsection 45 (1) of the Regulation is revoked and the following substituted:

4. Any documents relating to a previous version of the pension plan that must be filed in support of an application for registration of the plan under subsection 9 (2) of the Act (or under a predecessor to that subsection) or in support of an application for registration of an amendment to the plan under subsection 12 (2) of the Act (or under a predecessor to that subsection).

(3) Paragraph 9 of subsection 45 (1) of the Regulation is revoked and the following substituted:

9. Copies of correspondence in respect of the pension plan between the administrator and any of the following persons within five years before the date of the request, but not personal information that relates to a member or former member unless the consent of the member or former member is obtained:

i. the Commission or the Pension Commission of Ontario or a person employed in the Office of either of them,

ii. the Superintendent or the Superintendent of Pensions or a person employed in the Office of either of them.

(4) Subsections 45 (2) to (4) of the Regulation are revoked.

17. Subsection 76 (1) of the Regulation is amended by striking out "with the Commission" in the first line.

18. Part III of the Regulation is revoked.

19. This Regulation comes into force on July 1, 1998.

SECTION	Regulations
INDEX NO.	YREG-28
TITLE	O. Reg. 625/98
APPROVED BY	Cabinet
PUBLISHED	Ontario Gazette, December 19, 1998, and FSCO website
DATE FILED	December 3, 1998

REGULATION TO AMEND
REGULATION 909 OF THE REVISED
REGULATIONS OF ONTARIO, 1990

MADE UNDER THE PENSION BENEFITS ACT

Note: Since January 1, 1998, Regulation 909 has been amended by Ontario Regulation 307/98. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1997.

1. **Subsection 8 (3) of Regulation 909 of the Revised Regulations of Ontario, 1990 is revoked and the following substituted:**
(3) Subsections (1) and (2) do not apply after December 31, 2000.

SECTION	Regulations
INDEX NO.	YREG-30
TITLE	Sec. 91 of the "Tax Credits and Revenue Protection Act, 1998"
APPROVED BY	Cabinet
PUBLISHED	FSCO Pension Bulletin 8/1 and FSCO website
DATE OF ROYAL ASSENT	December 18, 1998

Section 67 of the Pension Benefits Act was amended by section 91 of the Tax Credits and Revenue Protection Act, 1998, S.O. 1998, c. 34 (formerly Bill 81) when this latter Act received Royal Assent on December 18, 1998.

PART IX

PENSION BENEFITS ACT

91. (1) Subsection 67 (1) of the Act is amended by inserting after "surrendered" in the seventh line "in whole or in part".

(2) Subsection 67 (2) of the Act is amended by inserting after "surrender" in the second line "in whole or in part".

(3) Section 67 of the Act is amended by adding the following subsection:

(4) Subsections (1) and (2) do not apply to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement in such circumstances or in such amounts as may be prescribed, subject to such restrictions as may be prescribed.

SECTION	Information - General
INDEX NO.	I100-003
TITLE	Publication of Decisions made under the Pension Benefits Act, R.S.O.1990, c. P.8
APPROVED BY	Superintendent of Financial Services
PUBLISHED	FSCO Pension Bulletin 8/1 and FSCO website
EFFECTIVE DATE	June 1, 1999

Under the former Pension Commission of Ontario (the "PCO"), it was the PCO's practice to publish decisions and notices issued in respect of:

(a) applications on which the Commission made first instance decisions;

(b) hearings before panels of the Commission;

(c) certain notices, orders and appointments of administrators by the Superintendent of Pensions; and

(d) certain enforcement activities taken under the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "PBA").

Other more routine decisions of the Superintendent of Pensions, such as the registration of a plan or the approval of a wind up report, were not published.

The *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 established the Financial Services Commission of Ontario ("FSCO") as the replacement for the PCO, and amended the PBA such that effective July 1, 1998, first instance decisions or proposed decisions under the PBA are made by the Superintendent of Financial Services (the "Superintendent"). The Financial Services Tribunal (the "FST") holds hearings regarding decisions or proposed decisions of the Superintendent. FSCO intends to continue the practice of publishing significant decisions made by the Superintendent and the FST under the PBA.

This policy sets out the types of decisions which will be published. The categories of information to be routinely published by FSCO in respect of decisions or proposed decisions made under the PBA are:

(1) Final decisions of the Superintendent on all matters where a Notice of Proposal has been issued, including final decisions on many matters that were not routinely published by the PCO;

(2) Final decisions of the Superintendent on certain matters where a Notice of Proposal is not required, including final decisions on significant matters such as the allocation of assets from the Pension Benefits Guarantee Fund and the appointment of administrators;

(3) Requests for hearings before the FST regarding decisions or proposed decisions of the Superintendent, and key dates related to such hearings;

(4) Decisions of the FST, including interim rulings; and

(5) Charges laid under the PBA, after the first appearance before the courts, and the outcome of prosecutions.

The types of decisions and information to be routinely published by FSCO in respect of decisions made under the PBA are listed in the appendix to this policy. As was the practice under the PCO, the Superintendent's decisions with respect to routine matters, such as the approval of a wind up report, will not be published by FSCO.

APPENDIX

Information to be Published – Category (1): Decisions of the Superintendent on all matters where a Notice of Proposal has been issued

DECISION BY THE SUPERINTENDENT TO:	APPLICABLE SECTION(S) OF THE PBA
refuse to register a pension plan	18(1)(a), 89(1)
revoke the registration of a pension plan that does not comply with the PBA and regulation	18(1)(b), 89(1)
revoke the registration of a pension plan that is not being administered in accordance with the PBA and regulation	18(1)(c), 89(1)
refuse to register an amendment to a pension plan	18(1)(d), 89(1)
revoke the registration of an amendment that does not comply with the PBA and regulation	18(1)(e), 89(1)
refuse to approve an equivalent basis to those criteria specified in ss. 31(3) or 31(4) for part-time employees as a condition precedent to membership in a pension plan where the Superintendent is of the opinion that the basis is not equivalent	31(5), 89(4)
order or refuse to order the administrator to accept an employee as a member of a class of employees	33(1), 89(3)
refuse to approve a payment under s. 42(1) (transfer of commuted value) that does not meet the prescribed requirements	42(7), 89(4)
approve, where the Superintendent imposes terms or conditions, a payment under s. 42(1) that does not meet the prescribed requirements	42(8), 89(4)
order or refuse to order a person to whom payment was made under s. 42(1) to repay the amount in certain circumstances	42(9), 89(2)(a)
refuse to approve a purchase under s. 43(1) (purchase of pension from insurance company) that does not meet the prescribed requirements	43(3), 89(4)
approve, where the Superintendent imposes terms or conditions, a purchase under s. 43(1) that does not meet the prescribed requirements	43(4), 89(4)
order or refuse to order a person to whom payment was made under s. 43(1) to repay the amount in certain circumstances	43(5), 89(2)(b)
refuse to consent to a refund of contributions to a member or former member	63(7) & (8), 89(4)
order the wind up of a pension plan	69(1), 89(5)

DECISION BY THE SUPERINTENDENT TO:	APPLICABLE SECTION(S) OF THE PBA
refuse to approve a payment out of the pension fund of a plan being wound up, before the Superintendent has approved the wind up report	70(3), 89(4)
refuse to approve a wind up report	70(5), 89(4)
consent or refuse to consent to payment of surplus to the employer out of a continuing plan	78(1), 79(1), 89(3.1)
consent or refuse to consent to an employer's application for surplus in a wound up plan	78(1), 79(3), 89(3.1)
consent or refuse to consent to a refund of employer overpayments	78(4), 89(3.2)
refuse to consent to a transfer of assets from one pension fund to another on the sale or disposition of the employer's business or assets	80(4) & (5), 89(4)
order or refuse to order the transferee to return to the pension fund assets transferred without the prior consent of the Superintendent under s. 80(4)	80(6), 89(2)(c)
refuse to consent to a transfer of assets from one pension fund to a successor plan's fund	81(4) & (5), 89(4)
order or refuse to order the transferee to return to the pension fund assets transferred without the prior consent of the Superintendent under s. 81(4)	81(6), 89(2)(d)
refuse to consent to a transfer of assets from one pension fund to another in circumstances where ss. 42, 80 or 81(1) to (7) do not apply	81(8), 89(4)
make or refuse to make an order declaring that the PBGF applies to a pension plan	83(1), 89(2)(d.1)
order or refuse to order an administrator or any other person to take or refrain from taking any action in respect of a pension plan or fund in certain circumstances	87(1), 89(2)(e)
order or refuse to order an administrator to prepare a new valuation report and/or specify assumptions and methods to be used in certain circumstances	88, 89(2)(f)

Information to be Published – Category (2): Final decisions of the Superintendent on certain matters where Notice of Proposal is not required

DECISION BY THE SUPERINTENDENT TO:	APPLICABLE SECTION(S) OF THE PBA
require a plan administrator to transmit notice of an "adverse" amendment	26(1)
make an order dispensing with notice of an "adverse" amendment by an administrator under s. 26(3)	26(4)

appoint an administrator where a plan does not have one	71(1)
act as administrator where a plan does not have one	71(1)
allocate assets from the PBGF	Regulation 909. s. 34(7)
any other individual decision the Superintendent wishes to publish	

Information to be Published – Category (3):
Requests for hearing before the FST regarding decisions or proposed decisions of the Superintendent and the status of such reviews

INFORMATION REGARDING:	APPLICABLE SECTION(S) OF THE PBA
requests for reviews by the FST of decisions or proposed decisions of the Superintendent and the status of such reviews	89

Information to be Published – Category (4):
Decisions of the FST, including interim rulings

INFORMATION REGARDING:	APPLICABLE SECTION(S) OF THE PBA
decisions of the FST, including interim rulings	89

Information to be Published – Category (5):
Charges laid under the PBA, and the outcome of prosecutions

INFORMATION REGARDING:	APPLICABLE SECTION(S) OF THE PBA
laying of charges for contraventions of the PBA, regulations or orders under the PBA	109
convictions and penalties resulting from charges laid under the PBA, including the results of appeals of such convictions	110

SECTION	Life Income Fund/Locked-In Retirement Account
INDEX NO.	L050-655
TITLE	1999 Maximum Withdrawal Amount Table
APPROVED BY	Superintendent of Financial Services
PUBLISHED	FSCO Pension Bulletin 8/1 and FSCO website
EFFECTIVE DA TE	January 4, 1999

The attached table has been prepared by the Financial Services Commission of Ontario. Additional copies of this table and copies of articles published by the Financial Services Commission of Ontario about the Ontario LIF are available for pick-up from FSCO's reception, 4th. Floor, 5160 Yonge Street, North York, Ontario.

Interest Assumptions Used in Table:

(1) 6.00%, which represents the greater of the CANSIM B14013 rate for December, 1998 (5.08%) and 6.00%, for the first 15 years, and

(2) 6.00% for the years remaining to the end of the year in which the planholder attains 90 years of age. (Assumption to age 90 is for the purpose of maximum withdrawal calculation only. The balance of a LIF must be used to purchase a life annuity by the end of the year in which the planholder attains 80 years of age.)

Percentages shown must be prorated for the initial fiscal year if less than twelve months. Part of a month is treated as a full month.

1999 Maximum Annual Withdrawal Amount Table for an Ontario Life Income Fund (LIF)

Age at January 1, 1999	New Age During 1999	Years to Age 90 is Attained	Maximum Withdrawal asa Percentage of the LIF Balance at January 1, 1999
48	49	42	6.19655%
49	50	41	6.23197%
50	51	40	6.26996%
51	52	39	6.31073%
52	53	38	6.35454%
53	54	37	6.40164%
54	55	36	6.45234%
55	56	35	6.50697%
56	57	34	6.56589%
57	58	33	6.62952%
58	59	32	6.69833%
59	60	31	6.77285%
60	61	30	6.85367%
61	62	29	6.94147%
62	63	28	7.03703%
63	64	27	7.14124%
64	65	26	7.25513%
65	66	25	7.37988%
66	67	24	7.51689%
67	68	23	7.66778%
68	69	22	7.83449%
69	70	21	8.01930%
70	71	20	8.22496%
71	72	19	8.45480%
72	73	18	8.71288%
73	74	17	9.00423%
74	75	16	9.33511%
75	76	15	9.71347%
76	77	14	10.14952%
77	78	13	10.65661%
78	79	12	11.25255%
79	80	11	11.96160%

* *The maximum annual withdrawal amount percentage is calculated on the basis of a twelve-month fiscal year to December 31, 1999 using the interest assumptions on page 1.*

SECTION	Spousal Rights
INDEX NO.	S500-901
TITLE	Same-Sex Spouse Survivor Benefits The Trustees of the OPSEU Pension Plan v. Her Majesty the Queen et al.
APPROVED BY	Superintendent of Financial Services
PUBLISHED	FSCO Pension Bulletin 8/1 and FSCO website
EFFECTIVE DA TE	December 8, 1998

What did the Ontario Court of Justice (General Division) decide in the recent case of The Trustees of the OPSEU Pension Plan v . Her Majesty the Queen et al?

The Trustees of the Ontario Public Service Employees Union Pension Plan (OPSEU) filed an application in the Ontario Court (General Division) asking for directions on whether the definition of spouse in the *Pension Benefits Act* (the "PBA") contravenes the *Canadian Charter of Rights and Freedoms* (the "Charter"). The application was heard on December 4 and the decision was released on December 8, 1998.

The court held that the definition of "spouse" in the PBA contravenes the Charter as discrimination based on sexual orientation. The appropriate remedy for this violation is to strike out the words "either a man or a woman" from the PBA definition of spouse and to substitute therefor the words "either one individual or another, whether of the same or opposite sex".

The decision took effect immediately. Although the Attorney-General has filed notice of appeal, no stay was sought. The decision is therefore the law of Ontario unless a higher court rules otherwise.

Do pension plan texts have to be amended in order to comply with the above decision?

No. The plan administrator must administer the plan and fund in accordance with the PBA even if the plan has not been specifically amended to comply. However, it is good practice to amend the plan so that it complies with the PBA.

Do pension plans have to provide same-sex survivor benefits?

Because the PBA definition of spouse is to be read to include "same-sex" spouses, plan administrators must provide the spousal benefits required by the PBA to same-sex spouses, regardless of the plan text. A plan administrator who refuses to provide survivor benefits to same-sex spouses would be in breach of the PBA.

Will employers now be required to fund same-sex survivor benefits?

Yes. Employers will have to ensure that their plans are funded to support the additional cost of survivor benefits to same-sex spouses. However, the cost of funding these benefits will likely be minimal.

Will the Superintendent accept an amendment to a plan, or a plan text, which extends survivor benefits

to same-sex spouses of pension plan members?

Yes. Although all plans must be administered as if they comply with the amended PBA definition of spouse, it is good practice to amend the plan text specifically in order to provide for same-sex spousal benefits. The Superintendent will accept such an amendment if it otherwise meets the requirements of the PBA.

Could the court appeal affect obligations under the PBA?

If the appeal is pursued and the appeal court reverses the declaration of invalidity of the "definition of spouse" in the PBA, then pension plans would no longer be obliged to provide same-sex survivor benefits nor fund same. However, the Superintendent would still accept amendments to plans to provide same-sex benefits, as these would be benefits more advantageous than the spousal survivor benefits required by the PBA.

Superintendent of Financial Services - Notices and Orders

Notices of Proposal to Make an Order

The Superintendent of Financial Services pursuant to subsection 89(5) of the PBA [Notice of Proposed Wind-Up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

1) Pension Plan for Employees of Trenton Machine Tool Inc., 0589028 (formerly C-15106, (effective October 31, 1995), January 29, 1999

2) Peoples Jewellers Limited Executive Pension Plan, (0597666 (formerly C-16089) (effective March 3, 1993), January 12, 1999

Notices of Proposal to Refuse to Approve a Partial Wind Up Report - Subsection 70(5) of the PBA

The Superintendent of Financial Services issued Notices of Proposal to Refuse to Approve a Partial Wind Up Report pursuant to subsection 70(5) of the PBA as follows (date of notice of proposal to make an order indicated):

1) Pension Plan for the Unionized Employees of Asea Brown Boveri Inc., 683433 (effective August 11, 1994), as amended November 6, 1998

2) Pension Plan for Employees of Monsanto Canada Inc., 341230 (effective between April 30, 1997 to December 31, 1998), November 30, 1998

Notices of Proposal to Consent to a Refund of Employer Contributions - Subsection 78(4) of the PBA

The Superintendent of Financial Services pursuant to subsection 78(4) of the PBA [Notice to Consent to a Refund of Employer Contributions], issued Notices of Proposal to Make an Order pursuant to section 78(4) of the PBA as follows (date of notice of proposal to make an order indicated):

1) Pension Plan for Employees of Wm. H. McGee & Co. Of Canada Ltd., 328344 (effective January 12, 1999)

2) Hospitals of Ontario Pension Plan, 346007, (effective February 15, 1999)

Orders - Section 69 of the PBA

The Superintendent of Financial Services issued Orders pursuant to subsection 69 of the PBA as follows (effective date of wind up and date of order indicated):

1) A.M. International Inc. Pension Plan for Management Employees, 0361980 (formerly C-12201) (effective October 17, 1996), November 10, 1998

2) A.M. International Inc. Pension Plan for Hourly Employees, 0361998 (formerly C-12212) (effective October 17, 1996), November 10, 1998

3) A.M. International Inc. Pension Plan (1979), 0202044 (formerly C-12200) (effective October 17, 1996), November 10, 1998

4) Pension Plan for the Hourly-Rated Employees of Barrymore Carpet Division of Carpita Corporation, C-14852 (Effective June 29, 1990), October 29, 1998

5) Consolidated GenCorp Canada Inc. Hourly Pension Plan, 0577072, (effective September 27, 1991), November 13, 1998

6) Consolidated GenCorp Canada Inc. Salaried Pension Plan, 0345512, (effective September 27, 1991), November 13, 1998

Appointments of Administrators - Section 71 of the PBA

The Superintendent of Financial Services appointed third party administrators pursuant to subsection 71(1)

of the PBA to wind up the plan in whole or in part.

1) Deloitte and Touche appointed as administrator of H-Can Industries Pension Plan, PN C0192158 effective September 11, 1997.

2) Metropolitan Life Insurance appointed as administrator of Pritchard Andrews Company Employees' Pension Plan, PN C0591388 effective May, 13, 1998.

3) Arthur Anderson Inc. appointed as administrator of Norman Wade Company Limited Employees Retirement Plan, PN C0315176 effective June 19, 1998.

4) Arthur Anderson Inc. appointed as administrator of Moyer Vico Corporation Shareholder Plan, PN C1037704, effective June 10, 1998.

5) Manufacturers Life appointed as administrator of C & C International Employees' Plan, PN C0687632, effective June 10, 1998.

6) Arthur Anderson Inc. appointed as administrator of Moyer Vico Corporation Employees' Plan, PN C0465070, effective June 11, 1998.

7) Manufacturers Life appointed as administrator of Aerodat Inc. Employees' Pension Plan, PN C1026970, effective August 7, 1998.

8) Imperial Life appointed as administrator of Norman Wade Company Limited Pension Plan, PN C0957316, effective September 15, 1998.

9) Mutual Life of Canada appointed as administrator of Tobac Curing System Employees' registered Plan, PN C0525691, effective September 15, 1998.

10) London Life appointed as administrator of Recreational Services International Inc. Employees' Retirement Plan, PN C1002682 effective December 23, 1998.

11) Deloitte and Touche appointed as administrator of Airvector Inc. Salaried Employees's Retirement Plan, PN C-9339, effective February 10, 1999.

12) Arthur Anderson Inc. Appointed as administrator of US1 Canada Inc. And its subsidiaries, PN 0411140, effective February 10, 1999.

Tribunal Activities

Appointments of Financial Services Tribunal Members

Name and O.C.	Effective Date of Appointment	Expiry Date
Milczynski, Martha (Acting Chair)	January 13, 1999	
O.C. 1808/98 (Vice-Chair)	July 8, 1998	July 7, 2001
McNairn, Colin (Vice-Chair)		
O.C. 1809/98	July 8, 1998	July 7, 2001
Bush, Kathryn M. (Acting Vice-Chair)	January 13, 1999	
O.C. 904/97	May 14, 1997	June 16, 1999
Erlichman, Louis		
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
Forbes, William M.		
O.C. 520/98	March 25, 1998	March 24, 2001
Gavin, Heather		
O.C. 11/99	January 13, 1999	January 12, 2002
Greville, M. Elizabeth		
O.C. 222/99	January 27, 1999	January 26, 2002
O.C. 2405/95	February 8, 1996	February 7, 1999
Martin, Joseph P.		
O.C. 1810/98	July 8, 1998	July 7, 2001
Moore, C.S. (Kit)		
O.C. 1591/98	July 1, 1998	June 30, 2001
Robinson, Judy		
O.C. 905/97	May 14, 1997	May 13, 2000
Stephenson, Joyce Anne		
O.C. 2409/98	November 4, 1998	November 3, 2001
O.C. 1930/95	October 28, 1995	October 27, 1998
Wires, David E.		
O.C. 257/97	February 27, 1997	February 26, 2000

Hearings Before the Pension Commission of Ontario (PCO)

Westinghouse Canada Inc. Consolidated Pension Plan (the "Consolidated Plan"), Registration Number 526632, FST File #X-0001

In September 1993, Westinghouse Canada Inc. requested a hearing concerning the Superintendent's Notice of Proposal to Make an Order that the Plan be wound up in part effective October 1, 1992, in respect of all members and former members of the Plan who became employees of Asea Brown Boveri Inc. A pre-hearing conference was held on July 14, 1994. In November 1994, the proceeding was adjourned pending the final outcome of the GenCorp case. By letter dated December 3, 1998, the applicant withdrew its request for a hearing.

Westinghouse Canada Inc. Pension Plan, Registration Number 348409, FST File #X-0002

In May 1995, Westinghouse Canada Inc. requested a hearing regarding the Superintendent's three Notices of Proposal to Make an Order requiring the Plan to be wound up in part. In September 1995, the proceeding was adjourned *sine die* pending the final outcome of the GenCorp case. By letter dated December 3, 1998, the applicant withdrew its request for a hearing.

Pension Plan for Unionized Employees of Asea Brown Boveri Inc. Located at London, Burlington and St. Jean, 683433, FST File X-0003

In July 1996, the Superintendent issued a notice refusing to approve the wind up report filed by Asea Brown Boveri Inc. ("ABB") on the grounds that the wind up report did not provide "grow-in" benefits in accordance with s. 74 of the Pension Benefits Act ("PBA"). ABB requested a hearing. Plan members belong to the CAW. The Union advised the Registrar that it wished to be a party to the hearing.

In May 1997, the Superintendent requested that the matter be adjourned pending the outcome of the GenCorp case. In July 1997, the matter was adjourned *sine die* for a period not exceeding one year.

On November 6, 1998, the Superintendent of Pensions issued an Amended Notice of Proposal to Refuse to Approve a Wind Up Report. A pre-hearing conference was held on January 22, 1999.

At the pre-hearing conference it was agreed that the parties would try to resolve some of the issues, and agreed that a telephone conference call will be held on June 30, 1999 to determine if the pre-hearing conference should be reconvened.

Babcock & Wilcox Industries Ltd. Salaried Employees Retirement Plan, Registration Number 205690, FST File #X-0004

Request by counsel for certain former employees of Babcock & Wilcox Industries Ltd., Bailey Controls Division (the "Former Babcock Employees") for a hearing regarding the Superintendent's registration of two amendments to the Plan on January 10, 1996. A pre-hearing conference scheduled for January 9, 1997, was adjourned *sine die*. In October 1998, the Former Babcock Employees withdrew their application for a hearing.

Clergy Retirement Pension Plan of the Diocese of Hamilton, FST File #X-0005

In September 1996, the Superintendent issued a notice proposing to order the Diocese of Hamilton to register its pension plan in accordance with ss.9(2) of the PBA. The Diocese of Hamilton requested a hearing. A pre-hearing commenced in May 1997, and was continued in September 1997 and February, 1998. Hearing dates were scheduled for October 13, 14, 15 and 16, 1998. By letter dated August 26, 1998, Revenue Canada advised that the pension plan is, in part, a retirement compensation arrangement (RCA) as defined in subsection 248(1) of the Income Tax Act. The Superintendent requested that the hearing be adjourned *sine die* to allow the Superintendent to

consider the matter.

McDonnell Douglas Canada Ltd. Salaried Plan, Registration Number 520593, FST File #X-0006

In November 1996, the Superintendent advised certain former members of the McDonnell Douglas Plan that he would not order the partial wind up they had requested. In December 1996, an individual, on behalf of a group of former McDonnell Douglas Employees, requested a hearing regarding the Superintendent's refusal to order a partial wind-up of the Plan.

A pre-hearing was held in July 1997, and continued in October and November 1997. A jurisdictional hearing was held on March 27, 1998. The hearing panel decided that the PCO has jurisdiction to hear this matter pursuant to Section 89 of the PBA . Reasons for Decision were issued on May 25, 1998. A hearing on the merits was held on November 4, 5 and 6, 1998 and continued on February 9 and 10, 1999. The panel reserved its decision.

Pension Plan for Employees of the Catholic Cemeteries Archdiocese of Toronto, Registration Number 309278, FST File #X-0008

In March 1997, the Labourers' International Union of North America, Local 506, (the "Union") requested a hearing on behalf of two seasonal employees pursuant to s. 89 of the PBA following the Superintendent's refusal to make orders requested by the Union. The Union seeks the following orders: (1) that the Superintendent of Pensions require the Archdiocese of Toronto to admit the two seasonal employees as members of the Pension Plan for Employees Catholic Cemeteries - Archdiocese of Toronto, with service credit from their original dates of hire; (2) a declaration that the exclusion of seasonal employees from Plan membership contravenes s.31(3) of the PBA; and, (3) a declaration that the Superintendent of Pensions violated the principles of natural justice, and the PBA and Regulation, in failing to disclose to the Union and the seasonal employees, copies of submissions made by the Archdiocese of Toronto in response to the Union's request for an Order.

A pre-hearing conference was held on October 7, 1998. On April 6, 1999, the Applicant withdrew its request for hearing.

Ontario Hydro Pension and Insurance Plan, Registration Number 352377, FST File #X-0010

In October of 1997, Ontario Hydro commenced an application in the Ontario Court (General Division) asking for a declaration that a dual valuation method was permissible under both the PBA and the Power Corporation Act in respect of Ontario Hydro's actuarial valuation reports prepared for funding purposes. In December of 1997, the Power Workers Union asked the PCO to make an order under s.88 of the PBA requiring the plan administrator to cease using the dual valuation method and to submit a new report.

The Power Workers Union and the Society of Ontario Hydro Professional and Administrative Employees, the two respondents in the court application, brought a motion to have the court application dismissed or stayed on the ground that it was premature and that the PCO was the appropriate adjudicative body to determine the issue. Intervention was granted to the PCO to participate in this motion as a friend of the court. The intervention motion was heard on February 2, 1998, and the prematurity motion was heard on February 2 and 3, 1998. On May 6, 1998, the court dismissed Hydro's application.

By letter dated June 22, 1998, the Power Workers Union withdrew their request for the PCO to deal with the matter.

On June 29, 1998, The Society of Ontario Hydro Professional and Administrative Employees requested that the PCO proceed with the matter. A pre-hearing conference was held on October 21, 1998. In a letter dated December 8, 1998, The Society of Ontario Hydro Professional & Administrative Employees withdrew its request for hearing.

Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851, FST File #X-0011

In February 1997, the Canadian Union of Public Employees, Locals No. 1144 and 1590 ("CUPE") requested a hearing pursuant to s. 89 of the PBA with respect to the Superintendent's decisions dated January 13, 1997, concerning the transfer of assets from the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, 302851 (the "Plan"), to the St. Joseph's Health Centre Pension Plan, the Providence Centre Pension Plan and the Morrow Park Plan (the "New Plans"). Four of the orders requested were intended to prohibit the asset transfers. The other four orders requested sought: (a) declarations that the Plan and the New Plans constitute a multi-employer pension plan ("MEPP") established pursuant to a collective agreement or trust agreement, and (b) orders that the Plan be administered by a board of trustees of whom at least half are representatives of Plan members.

A pre-hearing conference was held in July 1997. A hearing on jurisdictional issues was held in January 1998. The hearing panel decided that the PCO has the jurisdiction to hold a hearing into whether the Pension Plan is a MEPP. A Disclosure Motion was heard on July 27, 1998 before the full panel, and a decision with reasons was released on September 9, 1998. A hearing on the merits was held on October 26, 27 and November 17, 1998. The PCO found that the Pension Plan did not meet the definition of a MEPP under the PBA , and therefore is not subject to the requirements of s.8(1)(e) of the PBA .

CWA/ITU Pension Plan (Canada), Registration Number 554717, FST File #X-0012

In March 1998, the Communications, Energy and Paperworkers Union of Canada ("CEP") requested a s.89 hearing regarding a proposed partial wind-up of the Plan. It asked the PCO: (a) to rescind the resolution of the Trustees to partially wind up the plan; (b) to order the Trustees and Administrator not to take any steps to realize the partial wind up; (c) to require the Plan to accept employer contributions on behalf of active members for work performed after December 31, 1997; and (d) to order the Trustee to fully consider dividing the Plan's assets and liabilities on an equitable basis between a CWA/ITU Plan and a Union Plan based on the number of retirees and the number of active participants.

A jurisdictional motion was heard on February 15, 1999. The hearing took place from February 22 through 26, 1999. The panel reserved its decision.

Ontario Hydro Pension and Insurance Plan, Registration Number 352377, FST File #X-0014

In March 1998, a former member of the Ontario Hydro Pension and Insurance Plan requested a hearing under s. 89 of the PBA, with respect to the refusal of the Superintendent to issue a Notice of Proposal under s. 87 of the Act. A pre-hearing conference was held on September 16, 1998. By letter dated November 26, 1998 the former member withdrew his request for a hearing.

Pension Hearings Before the Financial Services Tribunal

Retirement Plan for Salaried Employees of Cooper Canada - Plan A, Registration Number 240622, FST File #P-0015

A request for a hearing was received on August 7, 1998 with respect to the Superintendent's Notice of Proposal to Make an Order dated July 2, 1998 that the Plan be wound up in part with respect to those members and former members of the Plan who were employed by Cooper Industries (Canada) Inc. ("Cooper") at its Port Hope, Ontario location and who ceased to be employed by Cooper from March 26, 1991 to March 30, 1992 or the date the last Plan member ceased to be employed by Cooper at its Port Hope location, whichever is later.

Cooper seeks an order to direct the Superintendent to refrain from carrying out the proposal to partially wind up the Plan and to stay the requirement to provide notice of the proposed wind-up order pending the outcome of the hearing, or to consolidate such notice with the notice of hearing, or to dispense with such notice.

A pre-hearing conference was held on October 26, 1998. Hearing dates were scheduled for March 30 and 31, 1999.

By letter dated March 3, 1999, Cooper withdrew its request for hearing. In a subsequent letter dated March 4, 1999, counsel for the members and former members of the Plan asked the Tribunal to order Cooper to pay costs of $3,500. Following receipt of written submissions from the parties, the Tribunal denied the request for costs, for the reasons set out in a written decision dated April 6, 1999, and agreed to the withdrawal of the request for hearing.

Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230, FST File #P-0013

On November 30, 1998, the Superintendent issued a Notice of Proposal to Refuse to Approve a Partial Wind Up Report. On December 31, 1998, Monsanto Canada Inc.("Monsanto") requested a hearing. Monsanto requests an order directing the Superintendent to approve the partial wind-up report pursuant to s.89(9) of the PBA.

A pre-hearing conference was held on April 7, 1999.

Commission Decisions – Applications Approved Since October 28, 1998

(Note: In this section, "Commission" refers to the Pension Commission of Ontario.)

Commission Decisions - Applications October 28, 1998

SurplusWithdrawal on Plan Wind Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909, (as amended by O.Reg.743/91) and s. 78(1) and 79(3) of the Act

At the Commission meeting held October 28, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

Pension Plan for Permanent Employees of P. Lawson Travel, doing business as Carlson Wagonlit Travel, Registration Number 449819

Payment of surplus to Carlson Wagonlit Travel from the Pension Plan for Permanent Employees of P. Lawson Travel, doing business as Carlson Wagonlit Travel, Registration Number 449819, in the amount of 50% of the surplus in the plan (total surplus estimated to be $185,000 as at June 30, 1997) plus investment earnings thereon to the date of payment and subject to adjustments to reflect fees and final settlement values.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

Pension Benefits Guarantee Fund (PBGF)

Notice of Proposed Declarations

On October 28, 1998, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

Revised Pension Plan for Employees of G.W. Martin Veneer Ltd. (Searchmount Division), Hourly Employees, Registration Number 414730

Allocations, subsection 34(7) of Regulation 909 under the PBA

On October 28, 1998, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

(a) Pension Plan for Salaried Employees of Provincial Crane Inc., Registration Number 957514

Allocate and pay an amount not to exceed $414,520 to provide, together with the assets of the Plan, for the benefits determined under section 34 of the Regulations;

And that a prior Allocation from the Pension Benefits Guarantee Fund made by the Pension Commission of Ontario on May 25, 1995 to pay to the **Pension Plan for Salaried Employees of Provincial Crane Inc.**, Registration Number 957514 is revoked.

Commission Decisions - Applications November 25, 1998

Surplus Withdrawal on Plan Wind Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909, (as amended by O.Reg. 743/91) and s. 78(1) and 79(3) of the Act

At the Commission meeting held November 25, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) Pension Plan for Executive Employees of Ascolectric Limited, Registration Number 475012

Payment of surplus to Ascolectric Limited from the Pension Plan for Executive Employees of Ascolectric Limited, Registration Number 475012, in the amount of 100% of the surplus in the plan ($17,443 as at January 31, 1997) plus investment earnings thereon to the date of payment and adjusted for fees and expenses to the date of payment.

(b) Pension Plan for Employees of Pride of Paris Fabrics Limited, Registration Number 385062

Payment of surplus to Richter & Partners Inc., Receiver Manager of the Estate of Pride of Paris Fabrics Limited, a Bankrupt, from the Pension Plan for Employees of Pride of Paris Fabrics Limited, Registration Number 385062, in the amount of 50% of the surplus in the plan (total surplus estimated to be $311,550.40 as at August 20, 1998) plus investment earnings thereon to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

(c) Pension Plan for Employees of RB & W Corporation of Canada, Registration Number 935056

Payment of surplus to RB & W Corporation of Canada, from the Pension Plan for Employees of RB & W Corporation of Canada, Registration Number 935056, in the amount of 70.92% of the surplus in the plan (total surplus estimated to be $415,763 as at December 31, 1997) plus investment earnings thereon to the date of payment and adjusted for all other gains or losses to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

(d) Pension Plan for Designated Employees of Leigh Metal Products Ltd., Registration Number 569798

Payment of surplus to Milcor Limited Partnership, from the Pension Plan for Designated Employees of Leigh Metal Products Ltd., Registration Number 569798, in the amount of 50% of the surplus in the plan (total surplus estimated to be $74,167.00 as at June 30, 1998) plus investment earnings thereon to the date of payment and any adjustments for any further expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

(e) Registered Pension Plan for the Employees of Brush Fuses Canada Inc., Registration Number 981464

Payment of surplus to Cooper Industries (Canada) Inc., from the Registered Pension Plan for the Employees of Brush Fuses Canada Inc., Registration Number 981464, in the amount of 60% of the surplus in the plan (total surplus estimated to be $49,657.00 as at December 31, 1993) plus investment earnings thereon to the date of payment and minus the consulting fees, legal fees and disbursements incurred by the Applicant and all other costs and expenses related to the continuing administration and wind up of the plan.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

(f) Retirement Benefit Plan for the Employees of The Police Credit Union Limited, Registration Number 277236

Payment of surplus to The Police Credit Union Limited from the Retirement Benefit Plan for the Employees of The Police Credit Union Limited, Registration Number 277236, in the amount of 100% of the surplus in the plan (estimated to be $190,726 as at April 30, 1996) plus investment earnings thereon to the date of payment, less expenses.

Applications Under s. 8 of the Reg. 909, R.R.O. 1990 (as amended by O.Reg. 743/91) s. 78(1) of the PBA - Request for Consent of the Commission to Surplus Withdrawal on Plan Wind Up to be filed in Court

At the Commission meeting held November 25, 1998, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulation, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

Pension Plan for Canadian Employees of The Insurance Corporation of Ireland Limited, Registration Number 381483

Payment of surplus to the Applicant, ICAROM Public Limited Company, from the Pension Plan for Canadian Employees of The Insurance Corporation of Ireland Limited, Registration Number 381483, in the amount of 80% of the aggregate of (i) $752,000 (the amount of surplus estimated to be in the Plan as at November 1, 1985, the effective date of the wind-up) plus (ii) the investment earnings on the surplus under the Plan from November 1, 1985 to the date of payment to the Applicant, less (iii) all fees, costs and expenses related to the continuing administration and wind-up of the Plan and any prior payment of surplus to the Applicant authorized by the Commission.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulation.

Pension Benefits Guarantee Fund (PGBF)

Notice of Proposed Declarations

On November 25, 1998, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection

83(1) of the PBA that the PBGF applies to the following pension plan:

Pension Plan for Employees of Glen L. Coulter Financial Services Ltd., Registration Number 0486357

Commission Decisions - Applications December 10, 1998

Surplus Withdrawal on Plan Wind Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909, (as amended by O.Reg.743/91) and s. 78(1) and 79(3) of the Act

At the Commission meeting held December 10, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) The Canadian System Federation Pension Plan, Registration Number 248799

Payment of surplus to the Canadian System Federation of the Brotherhood of Maintenance of Way Employees from The Canadian Pacific System Federation Pension Plan, Registration Number 0248799, in the amount of 43.4% of the surplus in the plan (total surplus in the plan estimated to be $280,170 as at September 30, 1993) plus investment earnings thereon to the date of payment, less expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

(b) Confederation Life Insurance Company Pension Plan for Canadian Field Representatives, Registration Number C-14329

Based upon

(i) the Application of Confederation Life Insurance Company in Liquidation (the "Applicant"), dated November 16, 1998, as supplemented on November 27, 1998 and further supplemented on December 9, 1998 (the "Application");

(ii) the submission of other documents as required under the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "Act") and Regulation 909, R.R.O. 1990, as amended ("Regulation 909"), including the Surplus Sharing Agreement; and

(iii) oral submissions made to the Pension Commission of Ontario (the "Commission") at its meeting of December 10, 1998,

the Commission gave its conditional consent pursuant to subsection 78(1) and 79(3) of the Act and clause 8(1)(b) of Regulation 909, to the payment of surplus to the Applicant from the Field Plan in the amount of the Estate's Share as set out in the Application. The Estate's Share of the Surplus has been estimated to be approximately $6,919,000 as at October 31, 1998 (taking into account investment earnings and adjustments contemplated in accordance with the Surplus Sharing Agreement).

The payment of Surplus is to be allocated and distributed to the Applicant and the Surplus Sharing Group in accordance with the terms of the Surplus Sharing Agreement, the terms of the Order of the Honourable Mr. Justice Winkler dated October 30, 1998 and the Supplementary Wind-up Report. Upon the Commission's consent becoming unconditional (as described below) and the reference being determined by a Master of the Ontario Court (General Division), the Surplus will be distributed in four stages as follows:

1. The first distribution will be made forthwith after the PCO Consent Date and the determination by the Master and will consist of: (i) setting aside the Contingency Reserve; (ii) setting aside the

Reserve and payment of the Representatives' Costs incurred to the date of such distribution from the Reserve; (iii) transfer of the CREF, the ILM, the CREF Distributions and the ILM Distributions as and when directed to do so by the Liquidator; and (iv) payment of the remainder of up to 90% of the Estate's Share to the Estate.

2. The second distribution will be made forthwith after or contemporaneously with the first distribution and will consist of: (i) payment of 90% of the Members Share to the members of the Surplus Sharing Group in accordance with the options selected by the members; and (ii) payment of the Representatives' Costs from the date of completion of the first distribution to the date of completion of the second distribution from the Reserve.

3. The third distribution shall consist of the balance of the funds in the Reserve, if any, in the following proportions: (i) 75% to the members of the Surplus Sharing Group and 25% to the Estate and (ii) the remaining 10% of the Estate's Share to the Estate and the remaining 10% of the Members Share to the members of the Surplus Sharing Group.

4. The fourth distribution shall be made on the fifth anniversary of the PCO Consent Date. The distribution shall consist of payment of the balance of the Contingency Reserve, if any, to the Estate.

The Commission's consent to the payments to the Applicant out of the Field Plan shall not become effective and unconditional until the Applicant has provided to the satisfaction of the Commission fully executed documents in substantially the same form and content as those contained in the Application and listed in Appendix A to the minutes.

(c) Confederation Life Insurance Company Pension Plan for Salaried Employees, Registration Number 277541

Based upon

(i) the Application of Confederation Life Insurance Company in Liquidation (the "Applicant"), dated November 6, 1998, as supplemented on November 23, 1998 and further supplemented on December 8, 1998 (the "Application");

(ii) the submission of other documents as required under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "Act") and Regulation 909, R.R.O. 1990, as amended ("Regulation 909"), including the Surplus Sharing Agreement; and

(iii) oral submissions made to the Pension Commission of Ontario (the "Commission") at its meetings of November 25 and December 10, 1998,

the Commission gave its conditional consent pursuant to subsection 78(1) and 79(3) of the Act and clause 8(1)(b) of Regulation 909, to the payment of surplus to the Applicant from the Salaried Plan in the amount of the Estate's Share as set out in the Application. The Estate's Share of the Surplus has been estimated in the Supplementary Wind-up Report to be approximately $46,855,000 as at October 31, 1998 (taking into account investment earnings and adjustments contemplated in accordance with the Surplus Sharing Agreement).

The payment of Surplus is to be allocated and distributed to the Applicant and the Surplus Sharing Group in accordance with the terms of the Surplus Sharing Agreement, the terms of the Order of the Honourable Mr. Justice Winkler dated October 30, 1998 and the Supplementary Wind-up Report. Upon the Commission's consent becoming unconditional (as described below) and the reference being determined by a Master of the Ontario Court (General Division),

the Surplus will be distributed in four stages as follows:

1. The first distribution will be made forthwith after the PCO Consent Date and the determination by the Master and will consist of: (i) setting aside the Contingency Reserve; (ii) setting aside the Reserve and payment of the Representatives' Costs incurred to the date of such distribution from the Reserve; (iii) transfer of the CREF, the ILM, the CREF Distributions and the ILM Distributions as and when directed to do so by the Liquidator; and (iv) payment of the remainder of up to 90% of the Estate's Share to the Estate.

2. The second distribution will be made forthwith after or contemporaneously with the first distribution and will consist of: (i) payment of 90% of the Members Share to the members of the Surplus Sharing Group in accordance with the options selected by the members; and (ii) payment of the Representatives' Costs from the date of completion of the first distribution to the date of completion of the second distribution from the Reserve.

3. The third distribution shall consist of the balance of the funds in the Reserve, if any, in the following proportions: (i) 75% to the members of the Surplus Sharing Group and 25% to the Estate and (ii) the remaining 10% of the Estate's Share to the Estate and the remaining 10% of the Members Share to the members of the Surplus Sharing Group.

4. The fourth distribution shall be made on the fifth anniversary of the PCO Consent Date. The distribution shall consist of payment of the balance of the Contingency Reserve, if any, to the Estate.

The Commission's consent to the payments to the Applicant out of the Salaried Plan shall not become effective and unconditional until the Applicant has provided to the satisfaction of the Commission fully executed documents in substantially the same form and content as those contained in the Application and listed in the Appendix B to the minutes.

Commission Decisions - Applications January 28, 1999

Surplus Withdrawal on Plan Wind Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909, (as amended by O. Reg. 743/91) and s. 78(1) and 79(3) of the Act

At the Commission meeting held January 28, 1999, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) The Retirement Plan for Manufacturing Hourly Paid Employees of LaSalle Machine Tool of Canada Limited, Registration Number 570671

Payment of surplus to 143420 Ontario Inc. from The Retirement Plan for Manufacturing Hourly Paid Employees of LaSalle Machine Tool of Canada, Limited, Registration Number 570671, in the amount of $190,700 as at October 31, 1996, adjusted for investment earnings thereon, actual expenses incurred in connection with the wind up and actual benefit payments made in respect of the wind up of the plan.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

(b) Pension Plan for Salaried Employees of Munich Reinsurance Company of Canada and The Great

Lakes Reinsurance Company, Registration Number 519702

Payment of surplus to The Great Lakes Reinsurance Company from the Pension Plan for Salaried Employees of Munich Reinsurance Company of Canada and The Great Lakes Reinsurance Company, Registration Number 519702, in the amount of 49.9% of the surplus in the plan (total surplus in the plan estimated to be $1,211,800 as at October 1, 1997) adjusted to reflect investment earnings or losses and expenses plus other gains / losses such as annuity purchase prices.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

(c) Federated Genco Limited, Local 6979, United Steelworkers of America Pension Plan, Registration Number 214569

Payment of surplus to Federated Genco Limited from the Federated Genco Limited, Local 6979, United Steelworkers of America Pension Plan, Registration Number 214569, in the amount of 50% of the surplus in the plan (total surplus in the plan estimated to be $167,099 as at August 31, 1994) plus a proportional adjustment for interest and expenses from the date of wind up to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

(d) Seiko Canada Inc. Pension Plan, Registration Number 493437

Payment of surplus to Seiko Canada Inc. from the Seiko Canada Inc. Pension Plan, Registration Number 493437, in the amount of 50% of the surplus in the plan (total surplus in the plan estimated to be $1,781,000 as at November 30, 1997) plus investment earnings and less expenses thereon to the date of payment.

The Commission consented to the course of action proposed by the Applicant, Seiko Canada Inc., set out in Ms. N. Peterson's letter of January 27, 1999, whereby the Applicant will approach insurance companies to request annuity quotations to provide for the amounts of basic benefits and surplus entitlement of 18 former members of the plan ("Unlocated Beneficiaries") who, despite all reasonable efforts, the Applicant has been unable to locate. The insurance companies will be required to hold the lump sum pending any of the Unlocated Beneficiaries providing proof of entitlement.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

(e) Hawker Siddeley Canada Inc. Pension Plan for Salaried Employees, Registration Number 344192

Payment of surplus to Hawker Siddeley Canada Inc. ("Hawker") and CGTX Inc., from the Hawker Siddeley Canada Inc. Pension Plan for Salaried Employees, Registration Number 344192, in the amount of 50% of the surplus in the plan as of June 17, 1996 ($39,761,785, after setting aside an amount of surplus for which a transfer may be requested to

Atchison Casting Corporation) plus 50% of the gains (net of losses) thereon to the date of payment less 50% of expenses and fees related to the wind up of the plan and distribution of the surplus assets. The Applicant's share of surplus is to be shared 90.47% to Hawker and 9.53% to CGTX Inc.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

Reasons for the decision on standing and the merits will follow separately.

Pension Benefits Guarantee Fund (PGBF)

Declaration that the PBGF Applies to Pension Plans

On January 28, 1999, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies to the following pension plan:

Revised Pension Plan for Employees of G.W. Martin Veneer Ltd. (Searchmount Division), Hourly Employees, Registration Number 414730

Allocations, subsection 34(7) of Regulation 909 under the PBA

On January 28, 1999, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

Revised Pension Plan for Employees of G.W. Martin Veneer Ltd. (Searchmount Division), Hourly Employees, Registration Number 414730

Allocate and pay an amount not to exceed $340,900 to provide, together with the assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation.

Commission Decisions - Applications February 17, 1999

Surplus Withdrawal on Plan Wind Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909, (as amended by O. Reg. 743/91) and s. 78(1) and 79(3) of the Act

At the Commission meeting held February 17, 1999, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) Retirement Plan for Employees of The Mortgage Insurance Company of Canada, Registration Number 313395

Payment of surplus to Mortgage Insurance Company of Canada from the Retirement Plan for Employees of The Mortgage Insurance Company of Canada, Registration Number 313395, in the amount of 65% of the Net Surplus estimated to be $4,138,228 as at July 31, 1998 (total surplus in the plan estimated to be $6,366,505) plus investment earnings thereon to the date of payment. The Net Surplus is the amount of surplus remaining on plan wind up after payment of all expenses and after provision for all benefits payable to members, former members and other persons entitled to benefits on plan wind up.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including

enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

(b) Pension Plan for Salaried Employees of PFB Corporation, Registration Number 352690

Payment of surplus to PFB Corporation from the Pension Plan for Salaried Employees of PFB Corporation, Registration Number 352690, in the amount of approximately $988,446 as at December 31, 1996, the effective date of the wind up, less estimated wind up expenses of $130,823. This amount will be adjusted for investment income and losses due to annuities purchased for members and changes in interest rates from the date of wind up to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

Pension Benefits Guarantee Fund (PGBF)

Declaration that the PBGF Applies to Pension Plans

On February 17, 1999, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies to the following pension plan:

(a) Pension Plan for Employees of Glen L. Coulter Financial Services Ltd., Registration Number 486357

Allocations, subsection 34(7) of Regulation 909 under the PBA

On February 17, 1999, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

(a) Pension Plan for Employees of Glen L. Coulter Financial Services Ltd., Registration Number 486357

Allocate and pay an amount not to exceed $286,884 to provide, together with the assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation.

Commission Decisions with Reasons

(Note: In this section, "Commission" refers to the Pension Commission of Ontario.)

INDEX NO.:	XDEC-41
PLAN:	Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851
DATE OF DECISION:	September 9, 1998
PUBLISHED:	FSCO Pension Bulletin 8/1 FSCO website.

IN THE MATTER OF the Pension Benefits Act, R.S.O. c. P.8 (the "Act");

AND IN THE MATTER OF the decision of the Superintendent of Pensions for Ontario dated January 13, 1997, with respect to the transfer of assets from the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the "Pension Plan") to the St. Joseph's Health Centre Pension Plan, the Providence Centre Pension Plan, and the Morrow Park Plan (the "New Plans");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act.

BETWEEN:

THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCALS No. 1144 and 1590 Applicant

-and-

SUPERINTENDENT OF PENSIONS, THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA, ST. MICHAEL'S HOSPITAL, ST. JOSEPH'S HEALTH CENTRE and PROVIDENCE CENTRE

Respondents

BEFORE:

C.S. (Kit) Moore, Chair
M. Elizabeth Greville, Member
David E. Wires, Member

APPEARANCES:

For the applicant:
Mr. M. Zigler
Mr. R. Tomassini

For the Superintendent of Pensions:
Ms. D. McPhail

For the respondents:
Ms. F. Kristjanson
Ms. R. Grant

Mr. F. Stopar

HEARING DATE:

July 27, 1998
Toronto, Ontario

DECISION RELEASED:

September 9, 1998

REASONS FOR DECISION

Nature of the Application

The Superintendent of Pensions for Ontario (the "Superintendent") refused to grant relief requested by the Canadian Union of Public Employees Locals No. 1144 and 1590 ("CUPE"), including a request by CUPE that the Superintendent issue an order under s. 87(1) of the Act that the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the "Pension Plan") and its successors constitute a multi-employer pension plan (a "MEPP"). In a letter written to the Superintendent and other interested parties, CUPE indicated its intention to appeal certain decisions of the Superintendent. Subsequently, a Request for Hearing under s. 89 of the Act was submitted to the Pension Commission of Ontario (the "Commission").

Following an initial pre-hearing conference and telephone conference call among the parties, a further pre-hearing conference was held at which a preliminary question arose as to whether the Commission had jurisdiction to conduct the hearing. The parties agreed to argue the issue of jurisdiction in advance of the merits. The Commission received written submissions on the matter, heard oral argument and advised the parties, by way of letter dated March 13, 1998, that it had determined that the Commission had jurisdiction to determine whether the pension plan is a MEPP under the Act. Written reasons were published in an amended decision released May 13, 1998 (the "May 13th Decision"). Where appropriate, reference is made to that decision in describing the background and reasoning for our subsequent decisions regarding the Commission's jurisdiction in these matters.

At the hearing on jurisdiction, the hearing panel was also asked to determine its jurisdiction in respect of four other issues relating to division of the Pension Plan, transfer of assets, section 80 and section 81 of the Act. In a subsequent letter dated May 29, 1998, the Commission advised the parties that it did not then have jurisdiction to hold a hearing under s. 89 of the Act regarding any of these four issues. Written reasons were published in a decision released May 29, 1998.

At a further pre-hearing conference held June 15, 1998, the parties agreed that certain disclosure of documents requested by CUPE was contested and required a hearing before the full panel. This written decision sets out the results of that hearing.

The Facts

Reference should be made to the May 13th Decision for certain facts set out in that decision.

The Issue

In a written submission prepared for the initial pre-hearing conference held July 21, 1997, CUPE asked the Commission to order the respondents to disclose documents relating to 16 listed items.

Following that pre-hearing, the respondents agreed to disclose some of the requested documents, and CUPE reduced the extent of its request regarding some of the remaining documents. The respondents have refused to disclose the following documents requested by CUPE:

(a) Operating Plans for each of the Hospitals for the years 1993/1994 and 1995/1996;

(b) Any financial documents relating to the funding of the Hospitals by either the government or the Sisters and in the possession or control of either the Sisters or the Hospitals for the years 1992 to 1995;

(c) Minutes of all meetings of the Sisters' Board of Directors relating to the operation and administration of the Plan from 1992 to

January 1, 1995;

(d) Minutes of the Board meetings of St. Joseph's in connection with St. Joseph's participation in the Plan from 1992 to January 1, 1995;

(e) Minutes of the Board meetings of Providence Centre in connection with Providence Centre's participation in the Plan from 1992 to January 1, 1995, and;

(f) Minutes of the Board meetings of St. Michael's in connection with St. Michael's participation in the Plan from 1992 to January 1, 1995.

Relevant Rules

Rule 4 of the Commission's Rules of Practice for Proceedings under Section 89 of the Act states that the Commission may order any party to provide to it or to any other party such particulars as are necessary for a satisfactory understanding of the issues in the proceeding. Sub-Rule 4.2(5) reads as follows:

> 4.2(5) The Commission may order a party to disclose in advance of the hearing any document or thing, other than privileged information, which is:
>
> (a) identified by the party requesting the order with reasonable specificity,
>
> and
>
> (b) relevant to the subject matter of the proceeding which may be admissible at the hearing.

The Arguments

The respondents argue that the disclosure at issue lacks relevance and specificity, and object to the additional costs and time required to retrieve and copy the documents requested. In this regard, the hearing panel heard testimony from one witness, Sister Marcella Iredale, who presented evidence regarding the confidential nature of the documents in question, and the amount of time required to delete portions of the minutes relating to members' personal issues and not relevant to these Commission proceedings.

CUPE argues that the documents requested are identified with reasonable specificity, and that the portions of the minutes requested are limited to those relevant to the Pension Plan and to the hospitals' organization and structure.

The Superintendent disputes the relevance or necessity of the additional disclosure, given the extensive disclosure already made. In the Superintendent's view, the Commission should order any documents containing confidential information to be sealed, as the most effective way of protecting confidentiality interests in this matter.

Reasoning and Result

Regarding operating plans requested by CUPE, the hearing panel notes that such plans have already been disclosed for the fiscal year 1994/1995 for each hospital, and the panel was not made aware of any reason, other than inconvenience, for not providing operating plans for the other two years requested.

Additional financial documents relating to funding of the hospitals were also requested for the years 1992 - 1995. The hearing panel is of the opinion that any such documents relating to the matter in this proceeding should be disclosed to CUPE to allow them a satisfactory understanding of the issues.

Disclosure regarding both the operating plans and the relevant financial documents shall be treated as confidential by the parties.

Given the written and oral submissions of the respondents, and the evidence presented by the witness, the hearing panel recognizes that the minutes requested by CUPE may contain personal member

information not relevant to the hearing on the merits, and that considerable time will be required of Sister Marcella Iredale to delete those personal references before disclosing the minutes. Notwithstanding these concerns, the hearing panel is of the opinion that the relevant portions of such minutes should be disclosed to CUPE, in the interests of allowing a satisfactory understanding of the issues. Such information shall be treated as confidential by the parties and shall not be used for any purpose other than those of this proceeding, unless otherwise ordered by the Commission.

Order

The Commission orders that all documents sought by CUPE and relevant to the issues to be determined in the hearing on the merits shall be disclosed by the respondents as requested by CUPE. The panel is sympathetic to the Sisters' concern regarding the confidentiality of certain documents, and would entertain written submissions regarding the sealing of any such documents when those documents are disclosed.

Such disclosure shall be made on or before September 30, 1998, to counsel for the other parties to this hearing, on the understanding that it shall not be used for any purposes other than those of this proceeding. All materials disclosed under this Order shall be treated as confidential unless otherwise ordered by the Commission.

Dated this 9th day of September, 1998 at the City of Toronto, Province of Ontario.

C.S. (Kit) Moore, Chair

M. Elizabeth Greville, Member

David E. Wires, Member

INDEX NO.:	XDEC-42
PLAN:	Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851
DATE OF DECISION:	December 18, 1998
PUBLISHED:	FSCO Pension Bulletin 8/1 FSCO website.

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "Act");

AND IN THE MATTER OF the decision of the Superintendent of Pensions for Ontario (the "Superintendent") dated January 13, 1997, with respect to the transfer of assets from the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the "Pension Plan") to the St. Joseph's Health Centre Pension Plan, the Providence Centre Pension Plan, and the Morrow Park Plan (the "New Plans");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act.

BETWEEN:

THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCALS No. 1144 and 1590 ("CUPE")
Applicant
-and-
SUPERINTENDENT OF PENSIONS, THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA (the "Sisters"), ST. MICHAEL'S HOSPITAL, ST. JOSEPH'S HEALTH CENTRE and PROVIDENCE CENTRE (the "Hospitals")
Respondents

BEFORE: C.S. (Kit) Moore, Chair
M. Elizabeth Greville, Member
David E. Wires, Member

APPEARANCES:

For CUPE:

Mr. M. Zigler

Mr. R. Tomassini

For the Superintendent of Pensions:

Ms. D. McPhail

Ms. L. McDonald

For the Sisters and the Hospitals:

Ms. F. Kristjanson

Mr. A. Fanaki

Hearing Dates:

October 26, 27 and November 17, 1998

Toronto, Ontario

Decision Released:

December 18, 1998

Toronto, Ontario

REASONS FOR DECISION

Nature of the Application

The Superintendent of Pensions for Ontario (the "Superintendent") refused to grant relief requested by the Canadian Union of Public Employees Locals No. 1144 and 1590 ("CUPE"), including a request by CUPE that the Superintendent issue an order under s. 87(1) of the Act that the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the "Pension Plan") and its successors constitute a multi-employer pension plan (a "MEPP"). CUPE filed a Request for Hearing under s. 89 of the Act with the Pension Commission of Ontario (the "Commission") asking that the Commission declare the Pension Plan to be a MEPP subject to s. 8 (1)(e) of the Act, and requesting the Commission to make orders regarding: (i) the Pension Plan's administration under s. 8 (1) (e); (ii) the proposed transfer of assets to the Hospitals' New Plans; and (iii) the status of the New Plans. Following a hearing on the Commission's jurisdiction in these matters, the Commission determined that it had jurisdiction to determine whether the Pension Plan is a MEPP subject to s. 8 (1)(e) of the Act (the "MEPP issue") and declined to take jurisdiction of the other matters prior to determining the MEPP issue.

The Facts

The following facts can be found in the Agreed Statement of Facts on Jurisdictional Issues provided to the hearing panel, on consent, at the hearing on jurisdiction.

Effective January 1, 1958, the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada (the "Sisters") established a pension plan for certain employees, and amended the plan from time to time.

In Article 1.20 of the Pension Plan, amended and restated as at January 1, 1992, "employee" is defined as meaning "any employee who is employed on a full-time or less than full-time basis at an Hospital", but not meaning "any person who is a casual or temporary employee of the Hospital or who is remunerated under contract for special services or on a fee for service basis".

"Employer" is defined in Article 1.21 of the Pension Plan as meaning "for the purposes of this Plan only, the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada in its personal capacity as employer with respect to the Hospitals".

"Hospital" is defined in Article 1.23 of the Plan as follows: "Hospital" means with respect to an Employee either Fort Bonne Association of Ontario, St. Joseph's Health Centre, St. Michael's Hospital, Providence Centre (formerly Providence Villa and Hospital) or the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada with respect to the employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada whose duties relate to the aforementioned hospitals plus any other health facility of the Sisters of St. Joseph as designated by the Sisters of St. Joseph from time to time.

The term "administrator" is defined in Article 1.03 of the Plan as meaning "the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada in its capacity as administrator under the Pension Benefits Act and Income Tax Act".

In 1994, the Commission received a letter written on behalf of the Sisters, stating that St. Joseph's Health Centre and Providence Centre would be separately incorporated on January 1, 1995, that the Sisters' plan would be split as of that date so that two new plans would apply to the two new corporations, and that St. Michael's Hospital would be incorporated on January 1, 1996, at which time the Sisters' plan would become the St. Michael's Hospital Plan. On December 6, 1994, the Sisters sent letters to Pension Plan

participants, informing them of the Sister's intent to incorporate Providence Centre and St. Joseph's Health Centre on December 31, 1994 and to incorporate St. Michael's Hospital a year later.

The Sisters amended and restated its plan as at January 1, 1995. The Preamble to the amended and restated plan states in part:

> Effective January 1, 1995, all assets and liabilities with respect to the employees or former employees of the St. Joseph's Health Centre and the employees or former employees of Providence Centre, who were Members or the Spouses, former Spouses, Beneficiaries, Dependent Children or joint annuitants of former Members entitled to benefits pursuant to the terms of the Plan as of December 31, 1994, subject to regulatory approval, will be transferred to the St. Joseph's Health Centre Pension Plan and the Providence Centre Pension Plan, respectively.

During 1996, the Superintendent received submissions written on behalf of CUPE, opposing the Sisters' splitting of the Pension Plan and transfer of assets. The Superintendent also received written submissions made on behalf of the Sisters, responding to the submissions made on behalf of CUPE.

On January 13, 1997, the Superintendent wrote to CUPE's legal counsel refusing to grant the relief requested in CUPE's submissions. In particular, the Superintendent refused to issue an order under s. 87(1) that the Pension Plan and any of its successors constitute a MEPP established pursuant to a collective agreement or a trust agreement within the meaning of s. 8(1)(e) of the Act. On the same day, the Superintendent consented to transfers of assets from the Pension Plan to the St. Joseph's Health Centre Plan and to the Providence Centre Plan.

On January 27, 1997, on CUPE's behalf, letters were sent to the Superintendent and to counsel for the Sisters stating that CUPE intended to appeal the Superintendent's decisions dated January 13, 1997 and requesting that transfers of assets be held in abeyance pending the outcome of the appeal.

On February 11, 1997, a Request for Hearing Under Section 89 of the Act was submitted to the Commission on CUPE's behalf.

Preliminary Matters

Following an initial pre-hearing conference and telephone conference call among the parties, a further pre-hearing conference was held at which a preliminary question arose as to whether the Commission had jurisdiction to conduct the hearing. The parties agreed to argue the issue of jurisdiction in advance of the merits. The Commission received written submissions on the matter, heard oral argument and advised the parties, by letter dated March 13, 1998, that it had determined that the Commission had jurisdiction to determine whether the pension plan is a MEPP under the Act. Written reasons were published in a decision released April 24, 1998 and amended May 13, 1998.

At the hearing on jurisdiction, the hearing panel was also asked to determine its jurisdiction in respect of four other issues relating to division of the Pension Plan, transfer of assets, section 80 and section 81 of the Act. In a subsequent letter dated May 29, 1998, the Commission advised the parties that it did not then have jurisdiction to hold a hearing under s. 89 of the Act regarding any of these four issues. Written reasons were published in a decision released May 29, 1998.

At a further pre-hearing conference held June 15, 1998, the parties agreed that disclosure of certain documents requested by CUPE was contested. A hearing into the disclosure was held on July 27, 1998 before the full panel. The Commission received written submissions, heard oral argument, and advised the parties by letter that all documents sought by

CUPE and relevant to the issues to be determined in the hearing on the MEPP issue were to be disclosed by the Sisters as requested by CUPE, on a confidential basis. Written reasons were published in a decision released September 9, 1998.

The Issue

Was the Pension Plan a multi-employer pension plan (a "MEPP") within the meaning of the Act, and therefore required to be administered in accordance with s. 8 (1)(e) of the Act?

The Relevant Legislation

In the Act, Section 1 includes the following definitions:

> 1.--"employer", in relation to a member or a former member of a pension plan, means the person or persons from whom or the organization from which the member or former member receives or received remuneration to which the pension plan is related,
>
> 1.--"multi-employer pension plan" means a pension plan established and maintained for employees of two or more employers who contribute or on whose behalf contributions are made to a pension fund by reason of agreement, statute or municipal by-law to provide a pension benefit that is determined by service with one or more of the employers, but does not include a pension plan where all the employers are affiliates within the meaning of the Business Corporations Act.

Other relevant excerpts from the Act follow:

> 8.--(1) A pension plan is not eligible for registration unless it is administered by an administrator who is,...
>
> (e) if the pension plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan of whom at least one-half are representatives of members of the multi-employer pension plan, and a majority of such representatives of the members shall be Canadian citizens or landed immigrants;
>
> 87.--(1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 89 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund.
>
> (2) The Superintendent may make an order under this section if the Superintendent is of the opinion, upon reasonable and probable grounds,
>
> (a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;
>
> (b) that the pension plan does not comply with this Act and the regulations; or
>
> (c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.
>
> 89.--(1) Where the Superintendent proposes to refuse to register a pension plan or an amendment to a pension plan or to revoke a registration, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant or administrator of the plan.
>
> (2) Where the Superintendent proposes to make an order under,...
>
> (e) section 87 (administration of pension

plan in contravention of Act or regulation),

the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and on any other person to whom the Superintendent proposes to direct the order.

...

(6) A notice under subsection (1), (2), (3), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Commission if the person delivers to the Commission, within thirty days after service of the notice under that subsection, notice in writing requiring a hearing, and the person may so require such a hearing.

94.(4) The Superintendent shall exercise the powers and perform the duties that are vested in or imposed upon the Superintendent by this Act, the regulations and the Commission.

96. It is the duty of the Commission,

(a) to administer this Act and the regulations;

...

The Arguments

CUPE argues that the Pension Plan meets the definition of a MEPP under s.1 of the Act and so must be administered in accordance with s. 8 (1)(e) of the Act. Its argument may be summarized as follows:

1. Before incorporation, the Hospitals operated as divisions and unincorporated entities. Each Hospital viewed itself as a separate organization and was viewed as such under other statutes. Each Hospital described itself in organizational terms, and each had a Board supervising and overseeing its business operations. In addition to a Board, each Hospital had all the trappings of a separate corporation, including an audited financial statement, chief executive officer, other signing officers, and a by-law.
2. Pension Plan annual reports identified the Hospitals as contributing employers, and Pension Plan text wording was ambiguous in this regard. Collective agreements were concluded separately by each Hospital and required Hospital employees to participate in the Pension Plan. Employee payroll stubs and income tax forms showed the Hospitals, not the Sisters, as employers. Since 1959, the Sisters made little or no financial contribution to cover Hospitals' costs, which are largely government funded.
3. CUPE argues that each Hospital, on a broad and purposive interpretation of the Act, falls within the definition of "employer", which includes reference to "...the person or persons from whom or the organization from which the member or former member receives or received remuneration to which the pension plan is related...". CUPE also argues that the Pension Plan is not a "...plan where all the employers are affiliates within the meaning of the *Business Corporations Act*", and therefore is not excluded from the Act's definition of "multi-employer pension plan".

The Respondent Sisters and Hospitals argue that the Pension Plan does not meet the definition of a MEPP under s.1 of the Act, and that in any event it should not be administered in accordance with s. 8 (1)(e) of the Act. Their arguments are summarized below:

1. The Sisters owned and operated all bank accounts from which the Hospitals' payroll and benefit costs were met, in the business names of the Hospitals, and government funding was deposited into the Sisters' bank accounts. Although the Sisters nominated signing officers at each Hospital, no Hospital had authority to borrow or

to operate those bank accounts. The requirement of the Public Hospitals Act that a hospital be governed and managed by a board did not confer separate legal existence on the Hospitals, nor did it disregard the Sisters as owner.

2. Prior to the Hospitals' incorporation, the Hospitals were business divisions of the Sisters. The only employer, the only source of remuneration to Hospital employees, was the Sisters. In addition, there was no agreement, statute or municipal by-law requiring any person or organization other than the Sisters to contribute to the Pension Plan.

3. Where a "person" is the employer (as was the Sisters), then the full meaning of "person" in the Act's definition of employer should be accorded and the enquiry should be at an end. Use of the term "organization" in this definition is not intended to confer separate legal status to divisions of persons.

4. If, in the alternative, the Commission were to find that the Sisters was not the sole employer, then on a purposive interpretation of the Act, the Hospitals would be affiliates, as each Hospital is controlled by the same person, the Sisters.

5. Finally, if the Commission were to find the Pension Plan to be a MEPP within the meaning of s.1 of the Act, the Respondent Sisters and Hospitals argue that it was not originally established "pursuant to a collective agreement or a trust agreement" and therefore would not be subject to s. 8(1)(e).

For many of the same reasons put forward by the other Respondents, the Superintendent also argued that the Sisters was the only source of Pension Plan members' remuneration and the only employer required to contribute to the Pension Plan, with the result that the Pension Plan was not a MEPP. The Superintendent added that, in the alternative, the Sisters owned and controlled the Hospitals, which meant that the Hospitals were affiliates of the Sisters, and the Pension Plan was not a MEPP.

Laches and Delay

The Respondent Sisters and Hospitals also argued that CUPE's delay in requesting this hearing, and the resulting prejudice to the Sisters, should cause the Commission to give effect to the equitable doctrine of laches, and refuse to grant any relief requested by CUPE in this matter.

CUPE argued that efforts had been made during the past ten years to deal with the MEPP issue; for example, when discussions were held with the Sisters regarding amalgamation of the Pension Plan with the Hospitals of Ontario Pension Plan ("HOOPP"). Reference to those discussions was noted in the minutes of the Sisters' General Council meeting of November 19, 1992.

Given the significance of the MEPP issue, the lack of specific authority in the Act to consider a delay of this nature, and the time required for CUPE to deal fully with the HOOPP discussions, the hearing panel did not find that the delay warranted a refusal to consider the MEPP issue. In the panel's view laches is not covered by s.113 of the Act.

Reasoning and Result

In deciding the MEPP issue, the hearing panel must first determine whether the Pension Plan meets the Act's definition of a MEPP. In doing so, the panel must address the following three questions:

(1) Was the Pension Plan established and maintained for two or more employers?

(2) Were contributions made to a pension fund, by those employers or on their behalf, by reason of agreement, statute or municipal by-law?

(3) Were the employers affiliates within the meaning of the *Business Corporations Act*?

If the panel were to conclude that the answers to questions (1) and (2) are "yes" and the answer to question (3) is "no", the plan would be a MEPP. The panel must then determine whether the MEPP is subject to s. 8(1)(e) of the Act, which requires the MEPP to be "established pursuant to a collective agreement or a trust agreement".

(1) Was the Pension Plan established and maintained for two or more employers?

In its argument that the Hospitals are separate employers, CUPE stresses the perception given to employees that the Hospitals are separate organizations responsible for pension plan management and other employment-related activities. For example, the panel heard evidence from CUPE representatives that collective bargaining matters were addressed directly by Hospital personnel. Reference was also made to Pension Plan Annual Reports and Hospital planning documents referring to the Hospitals as Pension Plan contributors and separate organizations. CUPE also noted that pay stubs and T4 income tax forms showed the Hospitals, not the Sisters, as employers, and that day-to-day banking transactions were carried out by the Hospitals.

On the other hand, these same CUPE representatives gave evidence that they had little or no knowledge of the Sisters' role in Hospital employment matters, nor did any of those witnesses deal directly with the Sisters on these matters. With these two facts in mind, it is not surprising that these witnesses viewed the Hospitals as employers.

When the panel heard from witnesses who were familiar with the Sisters' relationship to the Hospitals, or who were directly involved in the Sisters' operations, a quite different picture began to emerge. For example, the Sisters owned and operated the bank accounts, in the business names of the Hospitals, and appointed signing officers through banking resolutions passed by the Sisters. All Ministry of Health funding pursuant to the *Public Hospitals Act* was deposited to these bank accounts, and all payroll and benefit costs were paid from them.

While Hospital names were shown on pay stubs and T4 forms, there is no question in the minds of the hearing panel that employees' remuneration, to which pension benefits were related, was paid from bank accounts under the control of the Sisters. The Sisters also appointed the auditors for Hospital financial statements, approved appointments of Hospital Board members and other senior officers, and approved Hospital by-laws. Not only did the Sisters own the property used in the operation of the Hospitals, but evidence was also given that assets of one Hospital were available to the Sisters to satisfy the debt of another Hospital.

In the panel's view, none of the three Hospitals controlled bank accounts from which employees remuneration was paid, with the result that none of the Hospitals could be considered employers as defined in the Act. Instead, the Hospitals were functioning as business divisions of a single employer, the Sisters, which had retained the powers to own and operate each of the Hospitals.

As a result, the panel concludes that prior to incorporation of the Hospitals, the Pension Plan was established and maintained for employees of only one employer, the Sisters.

(2) Were Pension Plan contributions required to be made to the pension fund by more than one employer by reason of agreement, statute or

municipal by-law?

Having determined that, prior to the Hospitals' incorporation, only one employer, the Sisters, existed for purposes of the Pension Plan, the panel then directed its attention to the question of whether contributions were required from more than one employer by reason of any agreement, statute or municipal by-law. The hearing panel was presented with no evidence that Pension Plan contributions were made by reason of statute or municipal by-law.

Was there an agreement under which contributions to the Pension Plan were required from more than one employer? The Sisters first established the Pension Plan effective January 1, 1958 through a group annuity contract with the Canada Life Assurance Company, which identified only the Sisters as the employer contributing to the Pension Plan. The group annuity makes no reference to Hospitals contributing to the Pension Plan. A trust agreement made March 31, 1975 between National Trust Company and the Sisters provided for "pension contributions on account of its said hospital employees" to be received by the trustee. This trust agreement makes no reference to Hospitals contributing to the Pension Plan.

The collective agreements for CUPE members require participation in the Pension Plan, but no reference is made to the amount of any contributions, how those contributions are made, or who makes them.

The Pension Plan text contains the following definitions:

1.20 "Employee" means any employee who is employed on a full-time or less than full-time basis at an Hospital. .....

1.21 "Employer" means for purposes of this Plan only, the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada in its personal capacity as employer with respect to the Hospitals.

The "Contributions" section of the Pension Plan, in addition to requiring Employees to contribute, states that:

3.02 "The Employer shall pay into the Pension Fund.....in such amounts and at such times as the Sisters of St. Joseph shall determine." .....

While the Pension Plan text contains some ambiguous wording, the Employer is clearly defined as the Sisters and it is only the Sisters and the Employees that are required to contribute to the Pension Plan.

As a result, the panel concluded that the Sisters was the only employer required to contribute to the Pension Plan by reason of agreement, statute or municipal by-law.

(3) Were the employers affiliates within the meaning of the *Business Corporation Act*?

Given the panel's finding that the Sisters was the only employer contributing to the Pension Plan, and the only employer required to contribute to the Pension Plan, there is no need to address this third aspect of the MEPP definition.

CONCLUSION

For these reasons, the hearing panel finds that the Pension Plan did not meet the definition of a MEPP under the Act, and therefore is not subject to the requirements of s. 8 (1)(e) of the Act.

Dated this 18th day of December, 1998 at the City of North York, Province of Ontario.

C.S. (Kit) Moore, Chair

M. Elizabeth Greville, Member

David E. Wires, Member

INDEX NO.:	XDEC-43
PLAN:	Hawker Siddeley Canada Inc. Pension Plan for Salaried Employees, Registration Number 0344192
DATE OF DECISION:	February 17, 1999
PUBLISHED:	FSCO Pension Bulletin 8/1 and FSCO website

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "Act");

AND IN THE MATTER OF a hearing held by the Pension Commission of Ontario (the "Commission") to consider an application for the Commission's consent to a payment of surplus to Hawker Siddeley Canada Inc. and CGTX INC. from the Hawker Siddeley Canada Inc. Pension Plan for Salaried Employees, Registration Number 0344192 (the "Plan"), such application made pursuant to subsection 78(1) of the Act and paragraph 8(1)(b) of Regulation 909, R.R.O. 1990 (the "Regulation").

PARTIES:

HAWKER SIDDELEY CANADA INC.
("Hawker")
Applicant

and

CONSULTATIVE COMMITTEE, COMPRISED OF SIX INDIVIDUALS DRAWN FROM AN ENTITLEMENT GROUP OF PLAN MEMBERS, FORMER MEMBERS, ANNUITIZED MEMBERS AND THEIR BENEFICIARIES
(the "Consultative Committee")

and

THIRTEEN ANNUITIZED MEMBERS FROM THE RETIREMENT PENSION PLAN FOR HOURLY PAID EMPLOYEES OF CANADIAN CAR DIVISION, FORT WILLIAM PLANT
(the "13 Annuitants")

BEFORE:

Mr. C.S. (Kit) Moore, Chair
Mr. William M. Forbes, Member
Ms. Judith Robinson, Member
Ms. Joyce A. Stephenson, Member
Mr. David E. Wires, Member

APPEARANCES:

For Hawker:
Mr. J. Galway
Ms. C. L. Helbronner

For the Consultative Committee:
Mr. S. Weir

For the 13 Annuitants:
Mr. L. Gottheil

HEARING DATES:

December 10, 1998 and January 28, 1999
North York, Ontario

DECISION RELEASED:

February 17, 1999

REASONS FOR DECISION

Nature of the Application

On August 21, 1998, the Commission received an application for its consent pursuant to subsection 78(1) of the Act and paragraph 8(1)(b) of the Regulation to a payment of surplus from the Hawker Siddeley Canada Inc. Pension Plan for Salaried Employees (the "Plan") to Hawker Siddeley Canada Inc. ("Hawker") and CGTX INC. ("CGTX"), the other participating employer under the Plan on its wind-up date of June 17, 1996.

The application was made pursuant to a surplus sharing agreement under which surplus of $39,761,785 at June 17, 1996 plus gains (net of losses) to the date of payment less certain expenses and fees relating to the wind-up of the Plan and distribution of surplus assets would be shared 50% with an Entitlement Group of approximately 2300 Plan members, former members, annuitants and beneficiaries (the "Entitlement Group"), as set out in the surplus sharing agreement. The remaining 50%, or $19,880,892, would be shared between Hawker (90.47%, or $17,986,540) and CGTX (9.53%, or $1,894,352) and adjusted in the same way for net gains and losses, expenses and fees. The total surplus of $39,761,785 at June 17, 1996 was determined after setting aside an amount in respect of a proposed transfer of assets to a Quebec-registered pension plan for 26 former members of the Plan.

The application was first considered by the Commission at its meeting of December 10, 1998, at which counsel for CAW-Canada requested standing for CAW-Canada and its Local 1075, and for certain annuitants included in the surplus sharing agreement. Earlier written submissions had been made regarding these matters of standing and the merits of the application. To allow the Commission time to review all written submissions, and to allow opportunity for further written submissions to be made, the Commission adjourned hearing of the application to its next scheduled meeting, on January 28, 1999.

Additional Background

Objections to the application concerned the circumstances of a transfer of assets and liabilities into the Plan from the Pension Plan for Hourly Paid Employees of Canadian Car Div., Fort William Plant, Registration Number C-6336 (the "Hourly Plan"), which was merged with the Plan effective January 1, 1986. On January 3, 1984, Hawker had sold the assets of its Canadian Car Division to Can-Car Rail Inc., which had established a pension plan to which Hourly Plan liabilities and a pro-rata share of assets were transferred for Hourly Plan members continuing employment with Can-Car Rail Inc. Pension entitlements for a group of other Hourly Plan members were annuitized and in a small number of cases were included in the Hourly Plan liabilities as deferred vested pensions. In Hawker's application for surplus withdrawal, the Entitlement Group included 182 surviving individuals whose entitlements could be traced back to the Hourly Plan, of which 178 were annuitants and 4 were deferred vested members, and of which 133 (73%) consented to the surplus sharing agreement. The 13 Annuitants raising objections were among the members of the Hourly Plan whose pensions were annuitized prior to 1986.

The CAW-Canada and its Local 1075 (the "CAW") is the successor trade union to the International Union, United Automobile, Aerospace and Agricultural Implement Workers Union - UAW and its Local 1075 (the "UAW"), which represented all members of the Hourly Plan and had a number of collective agreements with the Canadian Car Division of Hawker. The last of these agreements was effective

June 1, 1982 to May 31, 1984 and included reference to the Hourly Plan, in the following terms:

> "Article 48 - Pension Plan The non-contributory pension plan instituted January 1st, 1963, and as amended at negotiations is supplemental to this agreement."

The Relevant Legislation

The following subsections of the Act are of particular relevance:

> 78.--(1) No money may be paid out of a pension fund to the employer without the prior consent of the Commission.
>
> 79. --(3) The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless,
>
> (a) the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus;
>
> (b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan;
>
> (c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of termination of the pension plan; and
>
> (d) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus money out of a pension fund.

Clause 8(1)(b) of the Regulation, which precludes payment out of surplus to an employer unless certain consent requirements have been met, reads as follows:

> 8.(1) No payment may be made from surplus out of a pension plan that is being wound up in whole or in part unless,...
>
> (b) the payment is to be made to an employer with the written agreement of,
>
> (i) the employer,
>
> (ii) the collective bargaining agent of the members of the plan or, if there is no collective bargaining agent, at least two-thirds of the members of the plan, and
>
> (iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind up as the Commission considers appropriate in the circumstances.

Preliminary Issue Regarding Standing

The Commission first decided on a request for the CAW and the 13 Annuitants to be given standing at the hearing on the merits of Hawker's application.

The request for CAW standing was made with respect to the interests of former members and annuitants whose entitlements could be traced back to the Hourly Plan. The CAW has no collective bargaining agreement covering members of the Plan, nor does the CAW purport to represent their interests in this matter. As a result, in accordance with the Commission's position on *Pension Plan for Employees of the Corporation of the City of Etobicoke*, October 4, 1997, XDEC-36 (PCO BBS - November 4, 1997), the CAW is not required to consent pursuant to clause 8(1)b) of the Regulation and, in the Commission's view, does not have a genuine interest in the matter. In the circumstances of this case, the Commission declined to give standing to the CAW.

Hawker argued that, in accordance with the Commission's policy that annuitants are not included

in the former member consent group unless annuitized shortly before the date of wind-up, as confirmed in *Ferro Canadian Employees' Pension Plan* , December 19, 1995 XDEC-32 (PCO Bulletin 6/4, Fall-Winter 1997, p.75), the 13 Annuitants should also be denied standing. The Commission disagreed, given that Hawker had included the 13 Annuitants in the Entitlement Group, offered them a share of surplus, and asked for their consent to the surplus sharing agreement. In spite of significant representation provided to the Entitlement Group through the Consultative Committee and its legal and actuarial advisors, the 13 Annuitants argued that the Consultative Committee included no representation from the Hourly Plan, and that significant issues needed to be addressed at the hearing regarding treatment of Hourly Plan assets and liabilities. The Commission determined that the 13 Annuitants should be given standing at the hearing on the merits.

Does the Application Meet the Requirements of the Act?

For the Commission to approve Hawker's application as required by subsection 78(1) of the Act, the application must comply with subsection 79(3) of the Act and clause 8(1)(b) of the Regulation to the Commission's satisfaction. The Commission is also mindful of its policy, as expressed in the following paragraph from *United Dominion Industries Limited*, March 24, 1994, XDEC-20 (PCO Bulletin 5/2-Summer 1994) ("*United Dominion*"), to take certain factors into account when determining the level of scrutiny to be given to prior plan documentation:

> "How, then, is the approach of the Commission different when dealing with applications under Regulation 909? As we said in the *Western Star* decision referred to above, the degree of scrutiny that the Commission will apply to plan documentation when determining if the requirements of the Clause have been met will vary from case to case. In this case, members and former members had separate legal representation, the requisite number of consents have been obtained as required by clause 8(1)(b) and all other legislative and policy requirements have been met. As well, the Commission was keenly aware of the other relevant facts, set out above in the section entitled "Consents", which relate to the size of the population opposing the application and surplus sharing agreement, the percentage of Plan members that had died pending resolution of the application and the age distribution of the remaining inactive Plan members. In light of all these factors, the Commission did not scrutinize the plan documentation as stringently as it would have under the old regulation nor, indeed, as it would absent one or more of those facts."

In the case of Hawker's application and the related surplus sharing agreement, most of these factors are present, as noted in the following points:

1. Notice Requirements - In the Commission's view, the notice met the requirements of the Act and Regulation, and in particular included relevant prior documentation for the Hourly Plan. The Commission also notes that Commission staff reviewed the notice and included the following comment in a memorandum dated December 2, 1998:

   > "Staff have reviewed the notice and are of the opinion that the contents of the notice satisfied the requirements of the regulations and the Commission's administrative practices regarding contents."

2. Separate Legal Representation - Members of the Entitlement Group were offered the opportunity to obtain individual legal advice through the Consultative Committee's counsel, Borden & Elliot, and Hawker agreed that reasonable costs of such advice would be paid for out of the Plan.

3. Consents - The requisite number of informed consents were obtained and a relatively high percentage (88%) of the Entitlement Group consented, as summarized in the following table taken from Hawker's application, showing notices and consents as at August 19, 1998:

	Notices Issued	Written Consents	Percentage Consenting
Active Members	309	285	92.2%
Former Members	348	243	69.8%
Partial Wind-Up Members	225	210	93.3%
Annuitants	1357	1234	90.9%

4. Age Distribution - The Commission takes note of Hawker's statement that it was under no legal obligation to include annuitants, but had voluntarily chosen to do so to make its surplus sharing proposal as broadly based as possible, in an effort to avoid protracted proceedings that would delay access to surplus for the employers and for members of the Entitlement Group. In this regard, Hawker states that approximately 65% of the Entitlement Group is over the age of 65 and approximately 45% of the Entitlement Group is over the age of 75.

5. Opposition to the Application - The 13 Annuitants opposing Hawker's application represent approximately 1% of the annuitized members, or approximately 0.6% of total membership, in the Entitlement Group. As noted above, a high percentage (88%) of members of the Entitlement Group have consented to the surplus sharing agreement.

In the Commission's view, these factors may allow the Commission to give a lower level of scrutiny to prior plan documentation than would otherwise be the case. Nevertheless, the Commission has been asked to address specific questions regarding prior plan documents for the Hourly Plan, and must consider those questions before deciding on the application. In this regard, the Commission's views are set out below.

Prior Documentation Relating to the Hourly Plan

Written submissions from the 13 Annuitants raised questions concerning prior documentation for the Hourly Plan, and in particular requested that the Commission address the following two issues before deciding on the application:

(a) the validity of an amendment made in 1971 to Article Twelfth of the 1963 trust agreement (the "1971 Amendment"); and

(b) the meaning and scope of the 1971 Amendment.

The 1963 trust agreement, which was the original trust agreement for the Hourly Plan, included the following exclusive benefit language in Article Third:

> "THIRD: Anything contained in this Agreement to the contrary notwithstanding, no part of the Trust Fund (other than such part as is required to pay taxes and administrative fees and expenses) shall be used for, or diverted to, purposes other than for the exclusive benefit of the employee members of the Plan or their beneficiaries".

Article Thirteenth provides for termination of the trust and agreement, but makes payment of the Trust Fund subject to Article Third:

> "THIRTEENTH: This trust and agreement may be terminated at any time by the Company and upon such termination or upon the dissolution or liquidation of the Company, the Trust Fund shall be paid out by the Trustee as directed by the Company subject to the

provisions of Article THIRD thereof."

The following relevant excerpt from the original wording of Article Twelfth describes the power of amendment originally contained in the 1963 trust agreement. This wording does not include reference to the exclusive benefit language of Article Third, but does require that amendments not permit trust funds to be used for purposes other than those specified in the Hourly Plan.

> "TWELFTH: This Agreement...may be amended or modified at any time by the Company, provided that no such amendment or modification shall increase the duties or obligations of the Trustee without its consent and provided further that no such amendment or modification shall authorize or permit any part of the Trust Fund to be used for, or diverted to, purposes other than those specified in the Plan. Any such amendment or modification shall be by a written instrument which shall be delivered to the Trustee." -

The 1971 Amendment added the following relevant clauses to Article Twelfth:

> "TWELFTH: Notwithstanding anything herein contained:
>
> ...
>
> (ii) in the event of the consolidation or merger of the Plan with or into any other pension plan established by the Company, the Company may direct the Trustee in writing to transfer the assets of the Trust Fund to any pension fund or funds established for the purpose of providing the pension and other benefits under the pension plan resulting from such consolidation or merger and in such event the Trustee shall forthwith transfer all of the assets in the Trust Fund to such pension fund or funds and such assets shall thereafter no longer constitute a part of the Trust Fund; provided that any such consolidation or merger shall be carried out on such terms as not to impair the pension and other benefits to which the members or pensioners are entitled under the Plan as at the effective date of such consolidation or merger;
>
> ...
>
> (v) in the event that at any time the assets in the Trust Fund together with the assets in all other pension funds established under the Plan shall exceed the amount required to provide the pension and other benefits to which the members are entitled under the Plan at such time, the Company may direct the Trustee in writing to transfer to a pension fund or funds established under any other pension plan of the Company or of any subsidiary or associated company, all or any portion of the excess assets and in such event the Trustee shall forthwith make such transfer and the assets so transferred shall thereafter no longer constitute a part of the Trust Fund.
>
> The Trustee shall be under no liability for any transfer of assets made by it in accordance with the written direction of the Company as aforesaid."

(a) Validity of the 1971 Amendment - In submissions regarding the validity of the 1971 Amendment, the 13 Annuitants highlighted the broad exclusive benefit language of Article Third of the 1963 trust agreement, and also noted that the original amending power of the 1963 trust agreement would not permit trust funds to

be used for purposes other than those specified in the Hourly Plan. Hawker submitted that the exclusive benefit language of Article Third was not so broad as to encompass the amending power of Article Twelfth. In support of this position, Hawker noted that the termination provision (Article Thirteenth) of the 1963 trust agreement was explicitly made subject to the provisions of Article Third, whereas the amending provision (Article Twelfth) was not. Both the 1963 pension plan text and trust agreement were silent on treatment of surplus assets.

The 1971 Amendment included amendments to the wording of Articles Third and Twelfth that provided an explicit exemption of Article Twelfth from the application of Article Third. The Commission was unable to determine conclusively whether or not this was the original intent of the 1963 documents, but was swayed by the argument that Article Twelfth was not intended to be subject to the exclusive benefit language of Article Third. This view is consistent with the position taken by Commission staff when the 1971 Amendment was submitted for registration and subsequently approved.

The Commission was presented with no documents indicating that the union had viewed the 1971 Amendment during their period of collective bargaining with Hawker, but notes that the collective bargaining agreements did include specific reference to the pension plan, and the union would have been expected to be aware of the 1971 Amendment, if not in 1971 then during the subsequent 13 years when collective agreements were made with Hawker. While the collective bargaining agreements referred only to the "non-contributory pension plan instituted at January 1st, 1963, and as amended at negotiations", there is no question in the Commission's view that the trust agreement and pension plan are linked to some degree and that members or their representatives would be expected to keep themselves informed of the status of both aspects of their pension arrangements.

The Commission also noted that a detailed legal review of prior plan documents was carried out by legal counsel for the Consultative Committee representing members of the Entitlement Group, including those individuals whose annuities arose from pension entitlements under the Hourly Plan.

The Commission therefore takes the view that the 1971 Amendment was a valid amendment to the 1963 trust agreement.

(b) Meaning & Scope of the 1971 Amendment - The 13 Annuitants also raised issues regarding the meaning and scope of the 1971 Amendment, in particular the provision that a merger "shall be carried out on such terms as not to impair the pension and other benefits" to which members are then entitled, and the provision giving employers direction over transfers of surplus assets to other funds. More specifically, the 13 Annuitants submitted that "other benefits" should include rights to surplus funds whether or not yet crystallized.

In the Commission's view, the Supreme Court of Canada's decision in *Schmidt* v. *Air Products* (1994), 115 D.L.R. (4th) 631(S.C.C.) would support the position that only those benefits crystallized at the time of the event (in this case, the merger) would come under the definition of "other benefits" here. The Hourly Plan did not develop surplus assets until Hourly Plan members' pensions were annuitized, which was not effected until after the 1984 merger took effect. As a result, the Commission has no reason to believe that the 1984 merger impaired pensions and other benefits of Hourly Plan members and pensioners. In fact, the surviving individuals from this group have been included in the Entitlement Group relating to the Hawker application to withdraw surplus from the Plan.

CONCLUSION

For these reasons, the Commission gave its consent pursuant to subsection 78(1) of the Act and clause 8(1)(b) of the Regulation, to a payment of surplus to Hawker and CGTX, from the Hawker Siddeley Canada Inc. Pension Plan for Salaried Employees, Registration Number 344192, in the amount of 50% of the surplus in the Plan as of June 17, 1996 ($39,761,785, after setting aside an amount of surplus for which a transfer may be requested) plus 50% of the gains (net of losses) thereon to the date of payment less 50% of expenses and fees related to the wind up of the plan and distribution of the surplus assets.

This consent shall not be effective until Hawker satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

Dated this 17th day of February, 1999 at the City of North York, Province of Ontario.

C.S. (Kit) Moore, Chair

William M. Forbes, Member

Judith Robinson, Member

Joyce A. Stephenson, Member

David E. Wires, Member

Financial Services Tribunal Decision with Reasons

(Note: only those FST decisions pertaining to pensions are included in this section)

SECTION:	Financial Services Tribunal Decision
INDEX NO.:	FST Decision #2 (FST File No. P0015)
TITLE:	Retirement Plan for Salaried Employees of Cooper Canada - Plan A, Registration Number 240622
APPROVED BY :	Financial Services Tribunal
PUBLISHED:	FSCO Bulletin and Internet

IN THE MATTER of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 ("the Act");

AND IN THE MATTER of a proposal of the Superintendent of Financial Services to make an order requiring the wind up in part of the Retirement Plan for Salaried Employees of Cooper Canada - Plan A, Registration Number 240622 (the "Pension Plan");

AND IN THE MATTER of a request for a hearing by the Financial Services Tribunal (the "Tribunal") in accordance with subsection 89(6) of the Act (the "Hearing Request");

AND IN THE MATTER of an application for an award of costs, in connection with the Hearing Request, made by certain members and former members of the Pension Plan;

BETWEEN:

COOPER INDUSTRIES (CANADA) INC.,
("Cooper") Applicant
-and-
SUPERINTENDENT OF FINANCIAL SERVICES
(the "Superintendent")
-and-
THIRTY-SIX MEMBERS AND FORMER MEMBERS
of
THE RETIREMENT PLAN FOR SALARIED EMPLOYEES OF COOPER - PLAN A,

REPRESENTED IN THE PROCEEDING BY COUNSEL (the "Represented Employees")
Respondents

BEFORE:

Mr. C.S. (Kit) Moore, Member of the Tribunal and Chair of the Panel
Mr. Colin H.H. McNairn, Vice Chair of the Tribunal
Ms. Judith Robinson, Member of the Tribunal

REPRESENT ATIONS BY :

For Cooper:
Mr. Randy V. Bauslaugh

For the Superintendent :
Mr. L. Glenn Frelick
For the Represented Employees:
Ms. Dona L. Campbell

DATE OF REPRESENT ATIONS:
On or before March 26, 1999

DECISION RELEASED:
April 6, 1999
Toronto, Ontario

REASONS FOR DECISION

This decision is in response of an application to the Tribunal by the Represented Employees for an award of their costs in this proceeding, in the amount of $3500, against Cooper.

The proceeding to which the application relates arose out of a notice of proposal by the Superintendent dated July 2, 1998 (the "Notice of Proposal") to make an order for the partial wind up of the Pension Plan, in relation to those members and former members of the Pension Plan who were employed by the Company at its Port Hope, Ontario location and who ceased to be employed during the wind up period specified in the Notice of Proposal (the "Affected Persons"). Those Affected Persons include the Represented Employees.

Cooper filed a Hearing Request with the Tribunal in respect of the Notice of Proposal on August 14, 1998. A pre-hearing conference was held on October 26, 1998 at which Cooper, the Superintendent and the Represented Employees appeared through their respective counsel. As a result of the pre-hearing, the Affected Persons were given full party status in the proceeding, certain matters at issue were identified and various elements of the hearing procedure were agreed upon. A pre-hearing conference memorandum was settled among the parties and distributed to them by the Registrar of the Tribunal on February 16, 1999. Dates for the hearing of March 30 - 31, 1999 were set and confirmed to the parties by the Registrar on January 6, 1999.

Cooper advised the Registrar, by letter of March 3, 1999, that it was withdrawing its Hearing Request. Immediately thereafter the Represented Employees made written application to the Tribunal for an award of costs against Cooper, with supporting reasons. Cooper then made written representations against the making of such an award. The Superintendent advised that she took no position with respect to the application for costs.

We have concluded that an award of costs against Cooper, in favour of the Represented Employees, is not justified in the circumstances of this proceeding. Cooper has offered a reasonable explanation for the withdrawal of its Hearing Request within the month before the scheduled hearing, namely the anticipated time and costs involved in finally resolving the issues raised and expected to be raised in the proceeding. Those issues that were raised by Cooper, at the pre-hearing conference, were real and substantial, although we do not express any opinion as to whether Cooper's position on those issues would ultimately be sustained following a hearing. Finally, there have been no unreasonable delays in any of the steps in the proceeding. In the Tribunal's view, Cooper was not responsible for any delays that could be said to have unfairly prejudiced the Represented Employees.

Consequently, we deny the application of the Represented Employees for an award of costs against Cooper.

Dated this 6th day of April, 1999 at the City of Toronto, Province of Ontario.

C.S. (Kit) Moore, Member and Chair of the Panel

Colin H.H. McNairn, Vice Chair

Judith Robinson, Member

Notice

New Actuarial Information Summary Form

On March 17, 1999, the Canadian Association of Pension Supervisory Authorities (CAPSA) endorsed an Actuarial Information Summary form (AIS) for implementation by CAPSA members at their option. The AIS has been jointly developed by FSCO, the Office of the Superintendent of Financial Institutions Canada (OSFI) and Revenue Canada in order to assist with the regulation of pension plans containing a defined benefit provision. Representatives of the Canadian Institute of Actuaries and FSCO's Actuarial Advisory Committee also participated in the development of the AIS.

The AIS is intended to be filed concurrently with the funding valuation reports filed with respect to such pension plans. Funding valuation reports do not follow a set format, and the purpose of the AIS is to provide, in a standard format, the key information contained in such reports.

FSCO, OSFI and Revenue Canada have adopted the AIS for use with respect to plans registered with FSCO or OSFI. Other CAPSA members may in future choose to adopt the AIS for use with respect to their registered pension plans.

For pension plans registered with FSCO that contain a defined benefit provision, a completed AIS will be required to be filed by the plan administrator concurrently with any funding valuation report that is filed with FSCO or Revenue Canada on or after July 1, 2000.

Before making copies of the AIS available, FSCO intends to consult on the new form with the individuals who volunteered for FSCO's consultation roster of administrators and plan sponsors (see page 11 of the December 1998 FSCO Pension Bulletin, volume 7, issue 1). After this

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